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Attorneys for Plaintiff
DEL MAR SEAFOODS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.

Plaintiff,

vs.

BARRY COHEN, CHRIS COHEN (aka
CHRISTENE COHEN), *in personam* and
F/V POINT LOMA, Official Number
515298, a 1968 steel-hulled, 126-gross ton,
70.8- foot long fishing vessel, her engines,
tackle, furniture, apparel, etc., *in rem*, and
Does 1-10,

Defendants.

Case No.: CV 07-02952 WHA

**DECLARATION OF MAX L.
KELLEY IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT OR,
ALTERNATIVELY, PARTIAL
SUMMARY JUDGMENT**

Date: April 3, 2008
Time: 8:00 a.m.
Place: Courtroom 9, 19th Floor
Hon. William H. Alsup

And Related Counterclaims

I, Max L. Kelley, hereby declare:

1. I am an associate in the firm of Cox, Wootton, Griffin, Hansen & Poulos,
LLP, attorneys of record for Plaintiff Del Mar Seafoods, Inc. ("Del Mar"). I submit this

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DelMarSeafoods/2501

1 declaration in support of Plaintiff Del Mar's Motion for Summary Judgment or, Alternatively,
 2 for Partial Summary Judgment. I have personal knowledge of the facts stated below and if
 3 called to testify regarding those facts, I would and could competently testify thereto.

4 2. Attached to this declaration as **Exhibit 1** are true and correct copies of the
 5 relevant excerpts from the transcript of the deposition testimony of Barry Cohen given in this
 6 case.

7 3. Attached to this declaration as **Exhibit 2** is a true and correct copy of the
 8 accounting spreadsheet generated by Del Mar to document the loan/repayment history of the
 9 debt owed by Barry Cohen under the Note and Mortgage and which has been produced
 10 during discovery to defendants as "DMSI 0269."

11 4. Attached to this declaration as **Exhibit 3** are true and correct copies of the
 12 relevant excerpts from the transcript of the deposition testimony of Joe Roggio given in this
 13 case.

14 5. Attached to this declaration as **Exhibit 4** is a true and correct copy an
 15 accounting spreadsheet generated by Del Mar, that was attached as Exhibit 1 to the transcript
 16 of the deposition testimony of Barry Cohen given in this case.

17 6. Attached to this declaration as **Exhibit 5** is a true and correct copy of a
 18 Memorandum written by Barry Cohen's accountant David Cantrell, and that was attached as
 19 Exhibit 2 to Barry Cohen's deposition.

20 7. Attached to this declaration as **Exhibit 6** is a true and correct copy of the
 21 Promissory Note at issue in this case.

22 8. Attached to this declaration as **Exhibit 7** is a true and correct copy of the
 23 Preferred Ship Mortgage at issue in this case.

24 9. Attached to this declaration as **Exhibit 8** is a true and correct copy of the
 25 defendants' Responses to Plaintiff's Requests for Admissions.

26 10. Attached as **Exhibit 9** to this declaration are true and copies of cancelled
 27 checks written by Barry Cohen to Del Mar for payments on the Promissory Note and that
 28 were also attached as Exhibit 10 to Barry Cohen's deposition transcript.

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DelMarSeafood2504

11. Attached as Exhibit **10** to this declaration is a true and correct copy of the letter written by Barry Cohen and sent to Del Mar, and that was produced to defendants during discovery and identified as "DMSI 0078."

12. Attached to this declaration as **Exhibit 11** are true and correct copies of the relevant excerpts of the deposition testimony of Joe Cappuccio taken in this matter.

13. Attached to this declaration as **Exhibit 12** are true and correct copies of the relevant excerpts of the deposition testimony of Christene Cohen taken in this matter.

14. On June 8, 2007, the verified complaint was filed alleging that the Cohens were in default as of May 1, 2007. The Vessel was subsequently arrested at the Hyde Street Pier in San Francisco by the U.S. Marshal. The Marshal turned custody of the Vessel over to the court-appointed substitute custodian, National Maritime Services ("NMS"). On or about June 21, 2007, NMS moved the Vessel to Point Richmond and turned custody over to Sugar Dock, LLC.

15. Attached to this declaration as **Exhibit 13** is a true and correct copy of the defendants' Answer and Counterclaim in this matter.

16. Attached to this declaration as **Exhibit 14** is a true and correct copy of Defendants' Responses to Plaintiff's Interrogatories, Set One, and a true and correct copy of their Supplemental FRCP Rule 26 Disclosures.

17. Attached to this declaration as **Exhibit 15** are true and correct copies of the relevant excerpts of the deposition testimony of Captain David Kobak taken in this matter.

18. Attached to this declaration as **Exhibit 16**, is a true and correct copy of the report of the Condition and Value Survey taken of the F/V POINT LOMA on January 7, 2008.

19. Attached to this declaration as **Exhibit 17**, are true and correct copies of the insurance policies regarding the Vessel, and which have been produced by defendants as COHEN 752 – 763.

20. Attached as **Exhibit 18** to this declaration is a true and correct copy of Barry Cohen's declaration filed in this action in support of defendants' motion to vacate the arrest.

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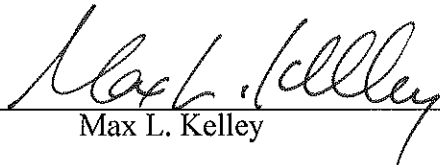
1 21. Attached as **Exhibit 19** to this declaration is a true and correct copy of Barry
2 Cohen's declaration filed in this action in reply to plaintiff's opposition to defendants'
3 motion to vacate the arrest

4 22. Attached as **Exhibit 20** to this declaration is a true and correct copy of Barry
5 Cohen's declaration filed in this action in support of defendants' motion to vacate the arrest
6 Exhibit 19 Spreadsheet DMSI 0001

7 23. Attached to this declaration as **Exhibit 21** is a true and correct copy of the
8 police report filed by Captain Kobak regarding the missing net.

9 24. The Cohens' counterclaim does not allege that they had any contractual
10 relationship with any third party. Similarly, they failed to disclose any such third parties in
11 their initial disclosures or in any discovery responses, nor have the Cohens ever produced a
12 copy of any contract with any third party that they contend was interrupted or interfered with.
13

14 I declare under penalty of perjury under the laws of the United States of America that
15 the forgoing is true and correct. Dated February 28, 2008, at San Francisco, California.
16

17 
18 Max L. Kelley

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DelMarScafood/2504

EXHIBIT 1

BARRY ALLEN COHEN January 9, 2008

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--oOo--

DEL MAR SEAFOODS, INC.,)	
)	
Plaintiff,)	
)	
vs.)	NO. C-07-2952-WHA
)	
BARRY COHEN, CHRIS COHEN (aka)	
CHRISTENE COHEN), in personam)	
and, F/V POINT LOMA, Official)	
Number 515298, a 1968)	
steel-hulled, 126-gross ton,)	
70.8 foot long fishing vessel,)	
her engines, tackle, furniture)	
apparel, etc., in rem, and)	
Does 1-10,)	
)	
Defendants.)	
_____)	

DEPOSITION OF
BARRY ALLEN COHEN

January 9, 2008

REPORTED BY: RITA R. LERNER, CSR #3179 (2001-404170)

<p style="text-align: right;">14</p> <p>1 A. Ever.</p> <p>2 Q. How about Olde Port Fisheries, Inc.?</p> <p>3 A. Yes.</p> <p>4 Q. And what time period were you an owner of Olde</p> <p>5 Port Fisheries, Inc.?</p> <p>6 A. From its inception until today.</p> <p>7 Q. When was Olde Port Fisheries, Inc., started?</p> <p>8 A. In 2003 or 2004, to my best recollection.</p> <p>9 Q. And you're an owner of the Point Loma Fishing</p> <p>10 Company, Inc., correct?</p> <p>11 A. Today?</p> <p>12 Q. Yes.</p> <p>13 A. Yes.</p> <p>14 Q. And you have been since that company was</p> <p>15 started; is that correct?</p> <p>16 A. Correct. But that company is and has been part</p> <p>17 of my fishing with that boat. I just had it</p> <p>18 incorporated.</p> <p>19 Q. How many corporations have you been -- well,</p> <p>20 have you actually started and been a major shareholder</p> <p>21 of?</p> <p>22 A. One.</p> <p>23 Q. The Point Loma Fishing Company, Inc.?</p> <p>24 A. No.</p> <p>25 Q. Well, then, that would be two. Did you start</p>	<p style="text-align: right;">16</p> <p>1 A. A long time ago. I would have to guess, if you</p> <p>2 want me to guess.</p> <p>3 Q. Well, I'm fairly certain you know that</p> <p>4 guessing, from having attended all these depositions, is</p> <p>5 a word we don't like to use.</p> <p>6 Let me give you the general instruction. I do</p> <p>7 not want you to guess about anything. I am entitled to</p> <p>8 and I want you to give me your best estimate, if you</p> <p>9 have one, but don't just pull numbers out of thin air.</p> <p>10 If you have an estimate, whether it be by year, month,</p> <p>11 day or decade, even, I'm entitled to the best narrowing</p> <p>12 down that you can give me. But if you're just picking</p> <p>13 something out of thin air, that's guessing. Do you</p> <p>14 understand that?</p> <p>15 A. Yes.</p> <p>16 Q. What's your best estimate of when Olde Port</p> <p>17 Fish Company, Inc., was started?</p> <p>18 A. In the 19 -- the end of the 1960s or the 1970s</p> <p>19 or the early part of the 1980s. That's my best</p> <p>20 recollection. I can't remember what year I went to a</p> <p>21 corporation from just being the sole owner.</p> <p>22 Q. What was the business of Olde Port Fish</p> <p>23 Company, Inc.?</p> <p>24 A. It started out as buying and selling fish from</p> <p>25 the boats; then it included retail sales; then it</p>
<p style="text-align: right;">15</p> <p>1 the Point Loma Fishing Company, Inc.?</p> <p>2 A. Yes, but I was not a major stockholder.</p> <p>3 Q. Don't you own 50 percent of that?</p> <p>4 A. 50 percent. I'm an equal.</p> <p>5 Q. Okay. What other California corporations,</p> <p>6 besides Point Loma Fishing Company, Inc., and Olde Port</p> <p>7 Fisheries, Inc., have you started?</p> <p>8 A. Olde Port Fish Company, Inc.</p> <p>9 Q. Any others?</p> <p>10 A. Not that I can think of as of this moment.</p> <p>11 Q. So we've got -- I just want to make sure the</p> <p>12 record is clear here. You started three corporations:</p> <p>13 Olde Port Fisheries, Inc., Olde Port Fish Company, Inc.,</p> <p>14 and Point Loma Fishing Company, Inc. Is that right?</p> <p>15 A. Correct.</p> <p>16 Q. Are all of those California corporations?</p> <p>17 A. Yes.</p> <p>18 Q. And have all of them been Subchapter S</p> <p>19 corporations?</p> <p>20 A. First of all, I don't know. I would have to</p> <p>21 guess. I don't think that Olde Port Fish Company, Inc.,</p> <p>22 was an S corporation, but I didn't know at the time an</p> <p>23 "S" from any other kind of corporation. I still don't</p> <p>24 know the difference.</p> <p>25 Q. When was Olde Port Fish Company, Inc., started?</p>	<p style="text-align: right;">17</p> <p>1 included a restaurant.</p> <p>2 Q. And what was the restaurant?</p> <p>3 A. The restaurant was called the "Olde Port Inn."</p> <p>4 Q. So the Olde Port Inn -- you owned that</p> <p>5 restaurant, but you ran it under the Olde Port Fish</p> <p>6 Company, Inc., corporation?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. Is the Olde Port Fish Company, Inc.</p> <p>9 corporation still in existence?</p> <p>10 A. No.</p> <p>11 Q. When did that corporation cease to exist?</p> <p>12 A. I believe, at the end of the 1980s.</p> <p>13 Q. And were the assets of that corporation</p> <p>14 transferred to some other corporation?</p> <p>15 A. I don't know how to answer that.</p> <p>16 Q. What happened to the business -- well, for</p> <p>17 example, the restaurant?</p> <p>18 A. Well, I'll explain why I can't answer that. I</p> <p>19 transferred it to Leonard Cohen, who put the tables and</p> <p>20 chairs and stuff in a corporation that he developed. So</p> <p>21 it's that transfer to another corporation, another</p> <p>22 person. That's why I don't know how to answer that, but</p> <p>23 that happened with the assets.</p> <p>24 Q. You sold the restaurant to Leonard; is that</p> <p>25 right?</p>

BARRY ALLEN COHEN

January 9, 2008

<p>18</p> <p>1 A. Yes.</p> <p>2 Q. And when you sold that restaurant to Leonard,</p> <p>3 he took that and put it into a new corporation; is that</p> <p>4 your understanding?</p> <p>5 A. He had started a corporation first.</p> <p>6 Q. Right.</p> <p>7 A. And he had an operating corporation, and he</p> <p>8 operated the restaurant for me first. And then he</p> <p>9 bought the restaurant assets from me.</p> <p>10 Q. And was that corporation Olde Port Inn, Inc.?</p> <p>11 A. Yes.</p> <p>12 Q. So Olde Port Inn, Inc., started operating the</p> <p>13 restaurant for Olde Port Fish Company, Inc., and then</p> <p>14 you sold the restaurant to Leonard, and he began not</p> <p>15 only managing, but actually running and owning the</p> <p>16 restaurant under the Olde Port Inn, Inc.?</p> <p>17 A. After a certain amount of time.</p> <p>18 Q. Are you a shareholder in Olde Port Inn, Inc.?</p> <p>19 A. No.</p> <p>20 Q. Do you have any ownership interest or derive</p> <p>21 income from Olde Port Inn, Inc.?</p> <p>22 A. No.</p> <p>23 Q. You don't get any lease income from them?</p> <p>24 A. No. I have to clarify that. We share rent, so</p> <p>25 however you want to look at that, but I don't actually</p>	<p>20</p> <p>1 joint ventures; is that correct?</p> <p>2 A. If I understand your question, it's either/or.</p> <p>3 Yes, I have. I have.</p> <p>4 Q. You have personally?</p> <p>5 A. I have.</p> <p>6 Q. Can you tell us what joint ventures you have</p> <p>7 been a party to?</p> <p>8 A. I was a party to a joint venture with Del Mar</p> <p>9 Seafoods. I was a party to a joint venture of Artemis,</p> <p>10 Inc., with Joe Cappuccio, and I was a party to a Mexican</p> <p>11 corporation with Joe Cappuccio and Victor Segura.</p> <p>12 Q. Were you also a party to a joint venture with</p> <p>13 Fisherman Johnny?</p> <p>14 A. Yes.</p> <p>15 Q. So that's at least four joint ventures that</p> <p>16 you've been a party to; correct?</p> <p>17 A. Correct.</p> <p>18 Q. Are there any more than that?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Are there any that your corporations have been</p> <p>21 a party to that are in addition to those four?</p> <p>22 A. Not that I can recall.</p> <p>23 Q. What was the joint venture you had with</p> <p>24 Del Mar?</p> <p>25 A. We bought, processed and sold fish at my lease</p>
<p>19</p> <p>1 get any income. Olde Port Inn and Olde Port Fisheries,</p> <p>2 Inc., share a lease site and we both pay the rent.</p> <p>3 Q. And the lease site is the property in Avila</p> <p>4 Beach; correct?</p> <p>5 A. On the pier at Port San Luis; correct.</p> <p>6 Q. Okay. When was the Point Loma Fishing Company,</p> <p>7 Inc., started?</p> <p>8 A. I don't remember the year.</p> <p>9 Q. Can you give me your best estimate?</p> <p>10 A. My best estimate would be in the early 2000s --</p> <p>11 or late. I would say the early 2000s.</p> <p>12 Q. So the Point Loma Fishing Company, Inc., was</p> <p>13 founded prior to execution of the promissory note and</p> <p>14 mortgage that is the subject of this litigation?</p> <p>15 A. I believe it was after.</p> <p>16 Q. When was the promissory note and mortgage that</p> <p>17 is the subject of this litigation signed?</p> <p>18 A. I don't remember.</p> <p>19 Q. But you believe the Fishing Company, Inc. --</p> <p>20 Port Loma Fishing Company, Inc. -- was established after</p> <p>21 that?</p> <p>22 A. I believe so.</p> <p>23 Q. In addition to your California corporations,</p> <p>24 you have also been a party, either individually or</p> <p>25 through your different corporations, in a number of</p>	<p>21</p> <p>1 site at Port San Luis.</p> <p>2 Q. What were the terms of that joint venture?</p> <p>3 A. By "terms," you mean what?</p> <p>4 Q. What were the basic terms under which the</p> <p>5 parties entered into a joint venture?</p> <p>6 A. That Del Mar Seafoods would finance it; I would</p> <p>7 manage it, be the manager of it and be -- and manage the</p> <p>8 property of it; and we would split the profits 50-50.</p> <p>9 Q. When you were the manager, how were you paid?</p> <p>10 Were you paid only on that 50-50 profit split?</p> <p>11 A. No. I was also an employee.</p> <p>12 Q. So you had an employment relationship with</p> <p>13 Del Mar in this joint venture?</p> <p>14 A. Actually, we considered that I had an</p> <p>15 employment with the joint venture and shared in the</p> <p>16 profit of the joint venture. Had it not been for the</p> <p>17 joint venture at that time, I would not have been an</p> <p>18 employee.</p> <p>19 Q. So, was the income that you received from that</p> <p>20 joint venture -- you said you were an employee. You got</p> <p>21 a paycheck; is that right?</p> <p>22 A. Correct.</p> <p>23 Q. But you also shared 50-50 in the profits;</p> <p>24 right?</p> <p>25 A. Correct.</p>

6 (Pages 18 to 21)

BARRY ALLEN COHEN

January 9, 2008

<p style="text-align: right;">22</p> <p>1 Q. Were the payments you received as an employee 2 deducted from the 50-50, or was it in addition to your 3 50 percent profit share? 4 A. In addition to. 5 Q. Okay. As the manager of that joint venture, 6 what were your responsibilities? 7 MR. WALSH: Asked and answered. 8 THE WITNESS: Normal management 9 responsibilities: That I would manage it; I would 10 oversee the operation. 11 MR. POULOS: Q. On a day-to-day basis? 12 A. On a day-to-day basis. 13 Q. Were you responsible for approving transfers of 14 inventory to customers of the joint venture? 15 A. You mean, selling them? 16 Q. Yes. 17 A. Yes. 18 Q. Did you sell -- when you were the manager of 19 that joint venture, did you sell product to Michael 20 Cohen, your son? 21 A. I believe -- well, I don't know if I sold it to 22 him personally, but I was aware that he bought some 23 product from the joint venture. 24 Q. And he did so on an account; correct? 25 A. Yes.</p>	<p style="text-align: right;">24</p> <p>1 Q. You understood that Olde Port Fisheries, 2 then -- that JV was basically operating as a division of 3 Del Mar; is that correct? 4 A. No, it was not a division of Del Mar. 5 Q. But it was termed that by some? 6 A. Only by one, that I know. 7 Q. And who was that? 8 A. The bookkeeper put it on the top of the 9 statement on her own volition. 10 Q. Was Michael Cohen an employee of that joint 11 venture? 12 A. Yes. 13 Q. And in what capacity was he employed by the JV? 14 A. He was an employee, a worker. 15 Q. Doing what? 16 A. He worked on the dock and inside the market. 17 Q. At some point did he also become not just an 18 employee, but also a customer? 19 A. Correct. 20 Q. And can you tell me in what capacity he became 21 a customer? What was he doing? 22 A. In a very small capacity he was trying to sell 23 fish to a couple local restaurants. 24 Q. Did he also try to start a web-based fish sales 25 business?</p>
<p style="text-align: right;">23</p> <p>1 Q. And that's often termed "on account"; correct? 2 A. Well, it was termed a "receivable." 3 Q. But it was on a running account balance that he 4 kept with the joint venture, an open book account, if 5 you will? 6 A. Well, those are your terms, but I would say it 7 seems to be the same as what I'm saying. 8 Q. Well, why don't you describe -- was he allowed 9 to take inventory and have the balance owed on that 10 inventory added to a running account balance? 11 A. He was not allowed to take inventory -- no more 12 than anybody else was allowed to take inventory. If he 13 wanted anything, he was invoiced and the invoice was 14 applied to his receivable. 15 Q. Was the same true for Leonard Cohen and the 16 Olde Port Inn? 17 A. Yes. 18 Q. So Leonard and Olde Port Inn were also 19 customers who obtained fish product from the joint 20 venture? 21 A. Correct. 22 Q. And that joint venture was called "Del Mar 23 Seafoods, Inc., Olde Port Fisheries Division," is that 24 right? 25 A. By some. It was not an official name.</p>	<p style="text-align: right;">25</p> <p>1 A. Yes, he did. 2 Q. And did the joint venture allow him to purchase 3 fish on account for both of those businesses? 4 A. We sold fish to Michael at a profit, at a 5 profit margin. What he did with those fish or what the 6 split was -- some went to restaurants, some went to the 7 web thing. I don't know if he got orders on the web 8 deal; I don't know. 9 So all I know is, yes, he did buy fish, and 10 whatever he did with that was up to him. I know he did 11 start a website and put our location and everything on 12 the pier. And that's what I know about it. 13 Q. The joint venture with Del Mar eventually 14 ended; is that correct? You stopped being in a joint 15 venture with Del Mar in Avila Beach? 16 A. To be exact, Del Mar ended the joint venture. 17 Joe Cappuccio ended the joint venture. 18 Q. Do you recall when that was done? 19 A. Sometime in 2004. 20 Q. When that joint venture ended, did Michael owe 21 a balance on his account with the joint venture? 22 A. Yes, he did. 23 Q. Do you recall how much that was? 24 A. I do not. 25 Q. Do you know, since you were the manager,</p>

7 (Pages 22 to 25)

BARRY ALLEN COHEN

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<p>26</p> <p>1 whether he ever paid that balance?</p> <p>2 A. The balance from when we closed?</p> <p>3 Q. Yes.</p> <p>4 A. I know he made a payment and I know there was</p> <p>5 credit given for another payment. But did he pay it</p> <p>6 off? The answer is no.</p> <p>7 Q. Did you ever agree to be responsible for that</p> <p>8 debt of Michael Cohen?</p> <p>9 MR. WALSH: Objection. Vague. If you</p> <p>10 understood the word "responsible," you can try and</p> <p>11 answer it.</p> <p>12 THE WITNESS: Well, I said I would be</p> <p>13 responsible for it.</p> <p>14 MR. POULOS: Q. Who did you say that to?</p> <p>15 A. Joe Roggio, for one.</p> <p>16 Q. When did you tell Joe Roggio that you would be</p> <p>17 responsible for Michael Cohen's debt?</p> <p>18 A. Sometime after we closed the joint venture.</p> <p>19 Q. So sometime after 2004?</p> <p>20 A. Sometime in 2004.</p> <p>21 Q. Okay. Who else did you tell that you would be</p> <p>22 responsible for Michael's debt?</p> <p>23 A. Probably Michael.</p> <p>24 Q. Have you paid that debt?</p> <p>25 A. Not intentionally.</p>	<p>28</p> <p>1 responsible for it. So to ask me after many things have</p> <p>2 changed am I still responsible for it is not a valid</p> <p>3 conclusion. A lot of things have changed that changed</p> <p>4 that agreement.</p> <p>5 Q. What has changed that -- well, do you believe</p> <p>6 the debt has been forgiven?</p> <p>7 A. I don't think that's the right terminology.</p> <p>8 Q. What is it that you think has changed that</p> <p>9 makes you no longer -- or that allows you to revoke your</p> <p>10 responsibility for that debt?</p> <p>11 A. I am not revoking my responsibility for that</p> <p>12 debt. That's your word. That's not what I said. But</p> <p>13 if you want me to answer, I will, but then I will answer</p> <p>14 with the whole truth, and if that's what you would like</p> <p>15 me to do, I will.</p> <p>16 Q. Of course, I want you to tell me the whole</p> <p>17 truth. Why do you feel you are no longer responsible</p> <p>18 for that debt?</p> <p>19 A. Okay. For several reasons. Number one is when</p> <p>20 I said I would be responsible for it, I was thinking</p> <p>21 that I would, as an employee of Del Mar, collect that</p> <p>22 money over time, and I didn't worry about it because I</p> <p>23 was an employee of Del Mar. And why I had confidence to</p> <p>24 be an employee of Del Mar is because when Joe Cappuccio</p> <p>25 asked me if I would come work at the Watsonville</p>
<p>27</p> <p>1 Q. Have you paid it, in your own estimation?</p> <p>2 A. In my mind?</p> <p>3 Q. Yes.</p> <p>4 A. No.</p> <p>5 Q. When fisherman -- well, withdrawn.</p> <p>6 How much do you understand that you are</p> <p>7 responsible to pay for Michael's debt?</p> <p>8 A. Today?</p> <p>9 Q. Yes.</p> <p>10 A. Nothing.</p> <p>11 Q. How much do you believe the debt was at the</p> <p>12 time that you agreed to be responsible for it?</p> <p>13 A. I don't know.</p> <p>14 Q. And why do you contend -- you've said in your</p> <p>15 own mind, you haven't paid that debt; correct?</p> <p>16 A. In my own mind, I have not paid it.</p> <p>17 Q. And in your -- and you agree that you had</p> <p>18 agreed to be responsible for it?</p> <p>19 A. I agreed to be responsible for it. At the time</p> <p>20 I said that I will be responsible for it.</p> <p>21 Q. And you're a man of your word, aren't you?</p> <p>22 A. Yes.</p> <p>23 Q. You're not trying to back out of being</p> <p>24 responsible for it, are you?</p> <p>25 A. I said at the time I said that, I was</p>	<p>29</p> <p>1 plant -- he offered me that job -- I talked to Joe</p> <p>2 Roggio, we went out to lunch, and Joe said, "You know,</p> <p>3 we want you to come here."</p> <p>4 And I said, "You know what, Joe. For me to</p> <p>5 sell my house and to buy a different house up here is a</p> <p>6 huge commitment, and what security do I have that I</p> <p>7 would have this job?" And Joe Roggio told me that day</p> <p>8 that if you come up here, if you sell your house in</p> <p>9 Cambria and you move up here, you can work for this</p> <p>10 company as long as you'd like to; that will be your</p> <p>11 security.</p> <p>12 And the day that Joe Cappuccio called me in his</p> <p>13 office and he said, "Barry, we no longer need your</p> <p>14 services," I asked Joe Roggio, "Joe, what about the</p> <p>15 promise you made me if I moved and bought a house up</p> <p>16 here and sold my house in Cambria?"</p> <p>17 And Joe Roggio said, "Things change, you know."</p> <p>18 That's a quote. "Things change, you know." That's the</p> <p>19 God's honest truth. That was one reason.</p> <p>20 The second reason is because when Del Mar left,</p> <p>21 they didn't want anything to do with that joint venture.</p> <p>22 They did not want to be involved with the harbor; they</p> <p>23 did not want to be a party to the lawsuit; they didn't</p> <p>24 want to be involved in any way. And Joe Cappuccio</p> <p>25 walked away from the joint venture. And Joe Roggio</p>

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<p style="text-align: right;">30</p> <p>1 signed an assignment giving me all the rights and 2 everything of that joint venture to me, and excluded 3 them from any involvement in the joint venture at all. 4 And when he signed that, he was well aware that there 5 were receivables on that joint venture receivable, 6 including Michael and Leonard Cohen. And he assigned it 7 all to me; he didn't -- there was no revoking anything. 8 Those are the reasons. 9 And there was one more reason. And because 10 when I made a boat payment to -- I made it to Del Mar 11 Seafoods, but I handed it to Joe Cappuccio -- then Joe 12 Roggio, on his own volition, applied it to outstanding 13 balances that are on that piece of paper he gave me, 14 which included Michael and Leonard's thing, and he 15 showed them as paid off with that \$175,000 payment. 16 So, on the left hand, Del Mar is saying that it 17 was okay that they took the money and applied it there, 18 and then today they're saying I still owe it. Well, it 19 can't be both ways. So that's why, in my mind, this 20 whole thing doesn't make any sense. 21 I gave that money as a payment against that 22 boat loan because Joe Cappuccio asked me if I would help 23 him because the bank was giving him a problem about 24 having such a big loan on his books. He asked me as a 25 favor to do something, to make a big loan. I said I</p>	<p style="text-align: right;">32</p> <p>1 A. I understand that's what it said on that paper 2 that I told him didn't look right to me. 3 Q. Okay. You understand that Del Mar believed 4 that that payment, that \$175,000 payment, if properly 5 applied, in Del Mar's mind, paid off that balance you 6 owed on the Michael debt. You understand that? 7 A. Absolutely not. 8 Q. That's Del Mar's position? 9 A. No, not true. They did not think that for one 10 second, because Joe Cappuccio asked me to get that money 11 for him to apply to the note that showed on their books 12 for the boat. 13 And Greg, I want to say something between you 14 and I. Please don't say inflammatory things to me. 15 Don't say I revoke on my word and things. That's not 16 necessary. We're going to be nice to each other; okay, 17 please? I won't be inflammatory to you. 18 Q. I'm not trying to be inflammatory. 19 A. I know, but with your choice of words, be 20 careful. Okay? 21 Q. I am. 22 A. Okay. Good. 23 Q. You've given me three reasons why you think 24 that the debt you personally assumed for Michael Cohen 25 you no longer owe. And I just want to make sure that</p>
<p style="text-align: right;">31</p> <p>1 would see what I could do. I went, talked to my wife, 2 we got a second on our house, and I gave Joe Cappuccio 3 that check as a payment against the loan that I had on 4 the boat. That's the essence of how the whole thing 5 worked. 6 Q. Okay. Let's look at -- the first one, for the 7 Michael Cohen debt -- we're talking about the Michael 8 Cohen debt -- you agreed to be responsible for it; 9 correct? Is that right? 10 A. That's what I said. 11 Q. You didn't say -- and it was you personally 12 assuming that responsibility; is that right? 13 MR. WALSH: I believe you've answered that 14 question. 15 MR. POULOS: You can answer it again. 16 THE WITNESS: I said I would be responsible. 17 MR. POULOS: Q. Okay. With respect to the 18 boat payment, you're talking about the payment of the 19 \$175,000; right? 20 A. That's the one I was referring to. 21 Q. Okay. You understand that Del Mar believed -- 22 as you said, Joe Roggio, applied a portion of that 23 payment to pay off the Michael Cohen debt that you said 24 you would be responsible for; correct? You understand 25 that's what Joe Roggio did?</p>	<p style="text-align: right;">33</p> <p>1 those are the three reasons, the only three reasons, 2 that you're relying on for saying that you no longer owe 3 that debt. 4 A. I'm going to say -- 5 MR. WALSH: Wait, Barry. Let me put an 6 objection on the record. 7 I'll put an objection on the record that you 8 cannot ask him for a legal conclusion; that there are 9 legal positions why he is not obligated to pay in 10 addition to whatever he may believe. With that, you can 11 answer. 12 THE WITNESS: Okay. I need -- do me a favor. 13 Read that back, what he asked me. 14 MR. POULOS: I'll rephrase it. I just want to 15 make sure I'm getting everything on the record today. 16 Q. We've established that you told Joe Roggio and 17 Michael, at least those two people, that you would be 18 responsible for Michael's debt. 19 A. That's true, but I think you said that I 20 assumed Michael's debt. 21 Q. By being responsible for it, I consider that 22 assuming that debt. 23 A. But that's not what I said. I said I would be 24 responsible for it. 25 Q. What did that mean to you?</p>

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<p style="text-align: right;">34</p> <p>1 A. That I would see that Del Mar got paid that 2 money. And that's a huge difference, in my mind, to 3 assuming something for myself. I said I will be 4 responsible for it. Exact words. 5 And I can't say that's the only three reasons. 6 I don't know if that is. I wasn't even thinking what 7 Bud was thinking, but those are the three that are on 8 the top of my mind of -- where I think I did not go back 9 on my word. I felt like, one, they were all assigned to 10 me, anyhow. It was given -- all the receivables were 11 given to me, so I could pay myself, if I want. And the 12 second -- or I could forgive them; I could do whatever I 13 want with them. 14 And the other one is when Joe Roggio made that 15 paper and I said to him, "This does not look right to 16 me," and he said, "Barry, I'm just cleaning up the 17 books; it's okay," meaning that what I understood what 18 he said when he was just cleaning up the books is that 19 it meant exactly that: He was justing up the books. 20 I still -- when I was going to pay off the amount of 21 money against that loan for the boat, that I would then 22 say I want that note signed back to me; that we're done. 23 And that's what I thought he meant: That he was just 24 cleaning up his books. It had nothing to do with what 25 was going on with me, because I gave that payment 100</p>	<p style="text-align: right;">36</p> <p>1 A. Presumably. I would think so, but I didn't 2 follow the fish. 3 Q. Do you have an idea of how much those debts 4 were? 5 A. I don't. 6 Q. By the time the joint venture was wound up, had 7 those debts been paid? 8 A. His receivables had not been paid. 9 Q. Did you also agree to be responsible for those 10 debts? 11 A. Yes. 12 Q. And did you tell that to Joe Roggio? 13 A. Yes. 14 Q. Did you tell that to Joe Cappuccio? 15 A. I don't believe so. 16 Q. Did you tell it to Leonard? 17 A. Yes. 18 Q. Do you have any idea as you sit here today how 19 much of Leonard's debt you agreed to be responsible for? 20 A. Whatever his debt was on the receivables to the 21 joint venture. 22 Q. You were given a payment schedule by Joe Roggio 23 after you made the \$175,000 payment that showed debts 24 for Michael, debts for Leonard, debts for inventory. Do 25 you remember that?</p>
<p style="text-align: right;">35</p> <p>1 percent for that note amount, that note loan, because 2 that was the one that I was asked to do and it made 3 sense to me because that's the one I had collateral on. 4 Q. We're going to come back to what that note was 5 for in a few minutes. 6 A. Okay. 7 Q. Let's talk about -- 8 A. Can we take a quick break right now. I just 9 need to run to the restroom. 10 MR. POULOS: Absolutely. 11 (Recess from 11:06 to 11:17) 12 MR. POULOS: Okay. Let's go back on. 13 Q. We've talked about Michael Cohen's debt. There 14 were some debts that Leonard Cohen also owed to Del Mar 15 Seafoods; is that right? 16 A. No. 17 Q. Who did he owe the debts to? 18 A. The joint venture. 19 Q. And what you're contending is owed to the Avila 20 Beach joint venture? 21 A. Correct. 22 Q. What were those debts for? 23 A. For fish that he purchased from the joint 24 venture. 25 Q. For use at Olde Port Inn, presumably?</p>	<p style="text-align: right;">37</p> <p>1 MR. WALSH: Objection. Vague as to time. 2 MR. POULOS: Q. You know the schedule I'm 3 talking about? 4 A. What was termed, I believe, written on there, 5 was "Statement of Payments." Is that -- 6 Q. Yes. 7 A. Okay. And -- say your question again. 8 Q. With respect to that, that showed balances due 9 from Michael, balances due from Leonard, and how those 10 were paid off by that \$175,000 payment; right? 11 A. And inventory. 12 Q. And inventory. 13 A. And that showed what Joe Roggio put on there. 14 That's what it showed to me. Not -- you have to 15 remember, I said it doesn't look right to me for a lot 16 of reasons. 17 Q. My question is: In terms of the numbers that 18 were on there for the debts of Michael and the debts of 19 Leonard and the debts for inventory, did you disagree 20 with those figures? Not whether they were still owed or 21 whether the payment was applied, but in terms of the 22 number of what that debt was that you agreed to be 23 responsible for, did you have any disagreement as to 24 that number? 25 MR. WALSH: Objection. Assumes facts not in</p>

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<p>38</p> <p>1 evidence.</p> <p>2 THE WITNESS: I did not say I agreed with the</p> <p>3 numbers. I disagree with the inventory number. I</p> <p>4 disagree with some additional ones on me, but I just</p> <p>5 broadly said that it doesn't look right to me.</p> <p>6 MR. POULOS: Q. I understand that, but that's</p> <p>7 not my question. My question isn't what you said. My</p> <p>8 question is, for Michael I believe it showed \$13,920.48.</p> <p>9 That's off the top of my head and I may be wrong a</p> <p>10 little bit. Did you disagree with that number?</p> <p>11 A. I didn't go that far.</p> <p>12 Q. As you sit here today, do you have any reason</p> <p>13 to disagree with the number that was shown for Michael's</p> <p>14 debts?</p> <p>15 MR. WALSH: Again, to clarify, shown on that</p> <p>16 piece of paper?</p> <p>17 MR. POULOS: Right.</p> <p>18 MR. WALSH: If you have the document, it might</p> <p>19 be easier. We're talking about that piece of paper</p> <p>20 authored by Joe Roggio. Do you understand, Barry?</p> <p>21 THE WITNESS: Yes.</p> <p>22 Greg, I don't disagree or agree with the</p> <p>23 numbers. I don't know.</p> <p>24 MR. POULOS: Q. I have the big copy -- I don't</p> <p>25 want to mark this one; I want to mark a better copy of</p>	<p>40</p> <p>1 reason to dispute that number?</p> <p>2 A. Right now I don't have a reason to dispute it</p> <p>3 but I don't have a reason to say that's accurate,</p> <p>4 either.</p> <p>5 Q. Okay. When you said you would be -- said to</p> <p>6 Joe Roggio that you would be responsible for Leonard's</p> <p>7 debts, did you have a specific number in mind?</p> <p>8 A. No. Whatever he owed.</p> <p>9 Q. Okay. For the inventory figure, what was it on</p> <p>10 the inventory figure that you did dispute?</p> <p>11 A. At that time, I didn't dispute anything other</p> <p>12 than the whole thing.</p> <p>13 Q. "That time" being when this was first presented</p> <p>14 to you?</p> <p>15 A. When he showed that to me, the only thing said</p> <p>16 was that it doesn't look right to me. And Joe said,</p> <p>17 "I'm just cleaning up the books." And that was pretty</p> <p>18 much the whole -- our conversation.</p> <p>19 MR. POULOS: Max, could you bring in a clean</p> <p>20 copy of this, a small one? Make three copies.</p> <p>21 Q. As you sit here today, do you have a reason to</p> <p>22 dispute the figures shown under "Inventory"?</p> <p>23 A. That I should be paying for? Is that what you</p> <p>24 mean?</p> <p>25 Q. The numbers shown here -- do you believe any of</p>
<p>39</p> <p>1 it.</p> <p>2 Well, I was close. It looks like \$13,920.40.</p> <p>3 I guess I was off by eight cents. You don't know</p> <p>4 whether that -- that showed us the beginning balance for</p> <p>5 Michael. Do you know if that was accurate or not? Do</p> <p>6 you have a reason to dispute that number?</p> <p>7 A. When I looked at this, I looked at it in total.</p> <p>8 I did not question is that exactly the right number. I</p> <p>9 don't know.</p> <p>10 Q. Okay. And today you don't know?</p> <p>11 A. And today I don't know.</p> <p>12 Q. Okay. And you don't know -- when you said to</p> <p>13 Joe Roggio, "I'll be responsible for Michael's debts,"</p> <p>14 did you have some number in your mind that you would be</p> <p>15 responsible for?</p> <p>16 A. No.</p> <p>17 Q. Under the Olde Port Inn -- that's the one</p> <p>18 applicable to Leonard; right?</p> <p>19 A. Correct.</p> <p>20 Q. That shows 16 --</p> <p>21 A. Looked like 18.</p> <p>22 Q. Or 18,089.10. Again, I want to mark a better</p> <p>23 copy. I apologize for that.</p> <p>24 A. There are good ones.</p> <p>25 Q. We'll put out a better copy. Do you have any</p>	<p>41</p> <p>1 these numbers are wrong under "Inventory"?</p> <p>2 A. I don't think this belongs in here.</p> <p>3 MR. WALSH: Let me note for the record that</p> <p>4 he's pointing to the top number in the inventory column.</p> <p>5 MR. POULOS: Actually, I think he's pointing to</p> <p>6 the whole column.</p> <p>7 MR. WALSH: Some of those are minuses.</p> <p>8 MR. POULOS: I understand.</p> <p>9 MR. WALSH: I think he means that's the total</p> <p>10 number you're talking about.</p> <p>11 MR. POULOS: Let's find out from the witness</p> <p>12 what he means.</p> <p>13 THE WITNESS: Okay.</p> <p>14 MR. POULOS: Q. What was your understanding of</p> <p>15 what the category of inventory related to on this sheet?</p> <p>16 A. When I look at that, I think that he's saying</p> <p>17 that's the ending inventory of the joint venture and</p> <p>18 that since -- now I'm going to speculate a little bit</p> <p>19 about it -- that since that's the ending inventory for</p> <p>20 the joint venture, that I should be responsible to pay</p> <p>21 that, also, since we kept it for -- the inventory stayed</p> <p>22 there. And he's saying that -- in this piece of paper,</p> <p>23 what it's implying is that I should pay for it.</p> <p>24 Q. Was the inventory that was left over at the end</p> <p>25 of the joint venture sold to Olde Port Inn for use in</p>

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<p>42</p> <p>1 their retail fish market?</p> <p>2 A. Olde Port Inn is a restaurant.</p> <p>3 Q. Right.</p> <p>4 A. The retail market is separate from the</p> <p>5 restaurant. A different company.</p> <p>6 Q. What company is that?</p> <p>7 A. Olde Port Fisheries, Inc.</p> <p>8 Q. Okay. That's your company?</p> <p>9 A. Right.</p> <p>10 Q. All right. Was the inventory left over</p> <p>11 transferred to the retail market for Olde Port</p> <p>12 Fisheries, Inc.?</p> <p>13 A. Yes.</p> <p>14 Q. And how much was the inventory worth that was</p> <p>15 transferred to Olde Port Fisheries, Inc.?</p> <p>16 A. I don't know exactly.</p> <p>17 Q. Okay. Just so the record is clear, when the</p> <p>18 joint venture ended, the inventory, fish inventory that</p> <p>19 was on hand, you used in your fish market, Olde Port</p> <p>20 Fisheries, Inc.?</p> <p>21 A. Correct.</p> <p>22 Q. And you can't tell us how much inventory you</p> <p>23 took at the end of that or that you used in your fish</p> <p>24 market at the end of that joint venture?</p> <p>25 A. Sitting here today, I do not know what the</p>	<p>44</p> <p>1 Q. You think it could have been close to that</p> <p>2 figure for the inventory? That's all I'm trying to get</p> <p>3 here.</p> <p>4 A. It could be close.</p> <p>5 Q. Okay. What did you understand the debt listed</p> <p>6 under the column "Point Loma" referred to?</p> <p>7 A. I'm going to have to say I don't know exactly.</p> <p>8 Q. What was your understanding?</p> <p>9 A. That there were some debts that the Point Loma</p> <p>10 owed. I don't want to guess, so I have to be careful</p> <p>11 how I say this. I believe that that represented fishing</p> <p>12 operational debts that the Point Loma owed the joint</p> <p>13 venture.</p> <p>14 Q. How did the Point Loma owe the joint venture,</p> <p>15 Point Loma being your fishing boat?</p> <p>16 A. Right, because the Point Loma fished for the</p> <p>17 joint venture. I would have to look at all the stuff,</p> <p>18 but I would say how it could be is that Point Loma</p> <p>19 purchased fuel and ice from the joint venture and that,</p> <p>20 usually, the fuel and ice is deducted from the check</p> <p>21 that they receive for the fish they deliver. And maybe</p> <p>22 that was the difference of fuel and ice, that much or</p> <p>23 thereabouts or something like that, more than the fish</p> <p>24 they delivered.</p> <p>25 Q. And what about the column -- well, first of</p>
<p>43</p> <p>1 accuracy of that number is. I don't. I couldn't be</p> <p>2 expected to remember exactly how much the inventory was.</p> <p>3 Q. If that is what this figure represents, do you</p> <p>4 dispute these numbers?</p> <p>5 A. That I owe it?</p> <p>6 Q. No. That this is the value of that fish, that</p> <p>7 it was valued at 10,300 and whatever that figure is.</p> <p>8 I'm reading it upside down.</p> <p>9 A. Okay. You're saying if that's accurate?</p> <p>10 Q. Yes.</p> <p>11 A. If that's accurate, which I'm not --</p> <p>12 MR. WALSH: Calls for an opinion, first of all.</p> <p>13 MR. POULOS: Q. I'm asking, do you have any</p> <p>14 reason to dispute that that is an accurate figure for</p> <p>15 the value of the fish that was taken by Olde Port</p> <p>16 Fisheries, Inc., for sale in its retail shop at the</p> <p>17 close of the joint venture?</p> <p>18 A. That was very compound, and to be exactly</p> <p>19 truthful, I cannot say it was used all in the retail</p> <p>20 market, because we could have sold some wholesale. But</p> <p>21 I will say, to clarify this, that at the end of the</p> <p>22 joint venture, there was product and supplies left on</p> <p>23 the premise. The value -- I don't know the exact</p> <p>24 amount. Could it be close to that? Yes. And so I'll</p> <p>25 say that, if that's what you're driving at.</p>	<p>45</p> <p>1 all, do you have any -- you're the owner of the Point</p> <p>2 Loma; right?</p> <p>3 A. Correct. Well --</p> <p>4 Q. You and your wife own 50 percent each of the</p> <p>5 shares of the Point Loma Fishing Company, Inc.?</p> <p>6 A. You've got it.</p> <p>7 Q. At the time these debts were incurred, though,</p> <p>8 the fishing boat Point Loma was owned just by you and</p> <p>9 your wife, not by the corporation; right?</p> <p>10 A. I believe that's true.</p> <p>11 Q. Okay. And can you tell me, as the then-owner</p> <p>12 of the Point Loma, whether the Point Loma owed this</p> <p>13 16,000 and some odd dollars? Looks like 16 or 18,021.</p> <p>14 I can't read that.</p> <p>15 A. What's the question?</p> <p>16 Q. Did you owe that amount?</p> <p>17 A. I don't know if that's exactly what I owed.</p> <p>18 Q. Could it be close?</p> <p>19 A. I think that I could have owed the joint</p> <p>20 venture that. Close.</p> <p>21 Q. Okay. And what about the debts under "Barry"?</p> <p>22 What did you understand those debts to be?</p> <p>23 A. I would say a combination of the note to the</p> <p>24 boat plus some additional charges someplace, some</p> <p>25 additional monies owed.</p>

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<p style="text-align: right;">46</p> <p>1 Q. By you personally?</p> <p>2 A. Well, I don't know what you're referring to.</p> <p>3 What personally? The difference, or the whole thing,</p> <p>4 or --</p> <p>5 Q. What did you understand that column to</p> <p>6 represent?</p> <p>7 A. That column represents, in part -- the note</p> <p>8 secured by the boat, I believe, is in that number. And</p> <p>9 I believe that in addition to the boat, some other</p> <p>10 monies owed were just put in the same column. I think</p> <p>11 it should have been different. I didn't understand the</p> <p>12 whole thing, but it should have been -- in my opinion,</p> <p>13 should have been the boat note separate from everything</p> <p>14 else, and that's what should have gotten paid.</p> <p>15 Q. The beginning balance that's shown on this</p> <p>16 sheet says the beginning balance is 237,035.48.</p> <p>17 (Inaudible comment by Mr. Walsh)</p> <p>18 MR. POULOS: Let's have this marked as</p> <p>19 Exhibit 1.</p> <p>20 (Whereupon, Exhibit 1 was</p> <p>21 marked for identification.)</p> <p>22 THE WITNESS: It's not the same document, not</p> <p>23 the same document at all. It's a different document.</p> <p>24 MR. ROGGIO: This is a more current one.</p> <p>25 THE WITNESS: This is the one that was done</p>	<p style="text-align: right;">48</p> <p>1 Q. And what did you think that that figure</p> <p>2 represented?</p> <p>3 A. I think this represents the major part of that</p> <p>4 number I believe was the note for the boat, the</p> <p>5 \$215,000, plus I believe that the rest was some other</p> <p>6 monies owed.</p> <p>7 Q. By you?</p> <p>8 A. That's what I think this shows.</p> <p>9 Q. Okay. What other monies owed do you think were</p> <p>10 included in that?</p> <p>11 A. Greg, I have no idea.</p> <p>12 Q. The beginning balance -- let's talk about the</p> <p>13 note for a minute. You just mentioned a note for</p> <p>14 \$215,000; correct?</p> <p>15 A. Correct.</p> <p>16 Q. That's a promissory note that you understand is</p> <p>17 part of what's at issue in this litigation; right?</p> <p>18 A. Correct.</p> <p>19 Q. And what was the \$215,000 note for? Where did</p> <p>20 that debt come from?</p> <p>21 A. That's two different questions.</p> <p>22 Q. Where did it come from?</p> <p>23 A. It came from when Joe Cappuccio was going to</p> <p>24 buy a 50 percent interest in the Point Loma so we could</p> <p>25 go a 50-50 joint venture in Mexico. Initially, he</p>
<p style="text-align: right;">47</p> <p>1 after I got laid off, when I asked for it. No, it was</p> <p>2 not even that. That was the most recent one.</p> <p>3 MR. POULOS: Let me take a break and grab the</p> <p>4 right one.</p> <p>5 (Recess from 11:36 to 11:40)</p> <p>6 MR. POULOS: Q. You want to compare that,</p> <p>7 because I think this is the one. I think that's the</p> <p>8 same, except, you know, it doesn't have the handwriting</p> <p>9 on it.</p> <p>10 A. It might be even clearer. But anyway --</p> <p>11 Q. I think it's a little better than this one.</p> <p>12 A. I know there's a good copy of, you know, kind</p> <p>13 of the original of this that didn't get all blurred in</p> <p>14 faxing and stuff.</p> <p>15 MR. POULOS: Let's re-mark Exhibit 1 so that</p> <p>16 we've got a proper Exhibit 1.</p> <p>17 (Whereupon, Exhibit 1 was</p> <p>18 marked for identification.)</p> <p>19 MR. POULOS: Q. Why don't you take a look at</p> <p>20 Exhibit 1, which I think is a slightly better copy than</p> <p>21 the one we've been looking at.</p> <p>22 All right. So we've been talking about the</p> <p>23 figures under -- we've gotten to look at the figure</p> <p>24 under the column called "Barry"; correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">49</p> <p>1 wanted to buy a 50 percent interest in the Point Loma.</p> <p>2 I had to get the Point Loma ready to go to Mexico, and</p> <p>3 had a lot of upgrades to do on it. Going to -- Mexico</p> <p>4 is like a third world country -- no infrastructure -- so</p> <p>5 there was a lot of things we had to do to make the boat</p> <p>6 self-sufficient. So a lot of the money that I used was</p> <p>7 to upgrade the boat. While the boat was being upgraded,</p> <p>8 then there were expenses on the boat. And all of the</p> <p>9 money that was on that note, at the time we did it, was</p> <p>10 to be applied to the purchase price of one half interest</p> <p>11 in the boat. That's where the amounts of money came</p> <p>12 from.</p> <p>13 Q. That added up to what you say was the original</p> <p>14 215 balance?</p> <p>15 A. I think I always said that was an approximate</p> <p>16 number. But that's not why the note was made. That's a</p> <p>17 different answer -- different question.</p> <p>18 Q. You know who Dave Cantrell is; right?</p> <p>19 A. Yes.</p> <p>20 Q. He's your CPA?</p> <p>21 A. Yes.</p> <p>22 Q. And he was involved in trying to help you and</p> <p>23 Joe Cappuccio set up the joint venture for Mexico;</p> <p>24 correct?</p> <p>25 A. He was somewhat involved.</p>

13 (Pages 46 to 49)

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<p>50</p> <p>1 Q. You consulted with him on that process?</p> <p>2 A. I don't know if I did or if Gene Glaser did or</p> <p>3 if we did together. I don't remember how it came about,</p> <p>4 but he did get involved.</p> <p>5 Q. Just so we've got it on the record, you and Joe</p> <p>6 Cappuccio had the idea of creating a joint venture to</p> <p>7 fish using the Point Loma in Mexican waters; correct?</p> <p>8 A. That's pretty correct.</p> <p>9 Q. And that became what ultimately is sort of</p> <p>10 short-handed to be known as the "Mexico joint venture,"</p> <p>11 right?</p> <p>12 A. Correct.</p> <p>13 Q. And as part of that joint venture, Joe</p> <p>14 Cappuccio was going to contribute certain things to the</p> <p>15 joint venture; correct?</p> <p>16 A. Correct.</p> <p>17 Q. And one of those was the cost of a fishing</p> <p>18 permit for the Point Loma to fish in Mexican waters;</p> <p>19 correct?</p> <p>20 A. Well, that's what happened.</p> <p>21 Q. Okay. And in addition, he was going to</p> <p>22 purchase -- originally, the plan was that he would</p> <p>23 purchase a half interest in the Point Loma?</p> <p>24 A. Correct.</p> <p>25 Q. And he would do that by paying for certain</p>	<p>52</p> <p>1 A. That's the end result.</p> <p>2 Q. Right. But the amounts that were included in</p> <p>3 that promissory note were not just amounts for the</p> <p>4 improvements on the Point Loma, were they?</p> <p>5 A. I don't think so.</p> <p>6 Q. You don't think I'm right?</p> <p>7 A. No. I don't think that they were all just for</p> <p>8 improvements on the Point Loma. There were a lot of</p> <p>9 maintenance issues; there was insurance to be paid. The</p> <p>10 boat got tied up for a long time, too, trying to get all</p> <p>11 this done. So there were expenses that were really not</p> <p>12 upgrades, but they were maintenance of it.</p> <p>13 Q. Also included when you converted all this into</p> <p>14 the promissory note were debts that you owed for</p> <p>15 personal advances; is that correct?</p> <p>16 A. Well, I don't know.</p> <p>17 Q. Well, isn't it true that you previously have --</p> <p>18 well, withdrawn.</p> <p>19 Why don't you take a look at -- we'll mark this</p> <p>20 as Exhibit 2.</p> <p>21 (Whereupon, Exhibit 2 was</p> <p>22 marked for identification.)</p> <p>23 MR. WALSH: I'm going to generally object to</p> <p>24 this line of questioning on the basis of the parol</p> <p>25 evidence rule.</p>
<p>51</p> <p>1 upgrades on the Point Loma; is that right?</p> <p>2 A. No.</p> <p>3 Q. How was he funding that purchase? I'll</p> <p>4 withdraw that. Let me ask it this way.</p> <p>5 In addition to purchasing the Mexico fishing</p> <p>6 permit, Joe Cappuccio was also going to pay for certain</p> <p>7 improvements or upgrades, however you want to phrase it</p> <p>8 to the Point Loma; is that right?</p> <p>9 A. Well, he was -- he would advance the money to</p> <p>10 get that done. He actually didn't do any upgrading or</p> <p>11 anything like that; his whole contribution was money.</p> <p>12 And it was used mostly for upgrade of the vessel and</p> <p>13 maintaining the vessel and paying the bills for the</p> <p>14 vessel. And whatever the total amount would be would be</p> <p>15 applied to his purchasing a 50 percent interest in the</p> <p>16 Point Loma. And I believe -- well, I don't know. I</p> <p>17 can't remember anything other than, really, that's the</p> <p>18 basic thing that happened. I don't want to say anything</p> <p>19 that's wrong, because I don't know.</p> <p>20 Q. Eventually, Joe ended up not purchasing part of</p> <p>21 the Point Loma; is that right?</p> <p>22 A. Correct.</p> <p>23 Q. And instead, the amounts advanced were</p> <p>24 converted to a promissory note and mortgage against the</p> <p>25 Point Loma; is that correct?</p>	<p>53</p> <p>1 THE WITNESS: Okay.</p> <p>2 MR. POULOS: Q. Have you seen this document</p> <p>3 before?</p> <p>4 A. Yes, I have.</p> <p>5 Q. And you know that this is a document, also,</p> <p>6 that Mr. Cantrell testified about a couple of weeks ago</p> <p>7 when we took his deposition; right?</p> <p>8 A. Right.</p> <p>9 Q. And you were present for that deposition?</p> <p>10 A. Correct.</p> <p>11 Q. And you remember, if you turn to page 2 of this</p> <p>12 memo from Mr. Cantrell, that it lists, in bullet points,</p> <p>13 Mexico fishing permit \$97,000; boat improvements,</p> <p>14 \$84,000; personal loans to Barry Cohen, \$62,004; and</p> <p>15 fishing loans prior to the JV of 53,411. Do you see</p> <p>16 that?</p> <p>17 A. Yes.</p> <p>18 Q. Isn't it true that the last three bullet points</p> <p>19 there -- boat improvements, personal loans and fishing</p> <p>20 loans, or some portions of all of those -- were what</p> <p>21 were converted to the debt --</p> <p>22 A. Yes.</p> <p>23 Q. -- in the promissory note?</p> <p>24 A. That's what I believe.</p> <p>25 Q. So the promissory note wasn't a promissory note</p>

14 (Pages 50 to 53)

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<p>58</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Do you agree with all of that?</p> <p>4 A. Yes.</p> <p>5 Q. Then it said, "The amount owed as of December</p> <p>6 2001 for these advances was \$16,394.75."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you agree with that?</p> <p>10 A. I don't disagree with it.</p> <p>11 Q. "Therefore the total owed to Cappuccio was</p> <p>12 \$78,398.75," which is "(\$62,004, plus \$16,394.75)."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Do you agree with that?</p> <p>16 A. Sitting here today, I do not disagree with it.</p> <p>17 Q. "According to Barry's" -- it continues,</p> <p>18 "According to Barry's records, Joe advanced</p> <p>19 \$111,715.78 cents for boat improvements."</p> <p>20 Do you see that?</p> <p>21 A. I see that.</p> <p>22 Q. Do you disagree with it or agree with it?</p> <p>23 A. I don't disagree with it. I don't understand</p> <p>24 it at this moment.</p> <p>25 Q. Okay. Does that refresh your recollection that</p>	<p>60</p> <p>1 asked for. It's in there. I didn't take anything out.</p> <p>2 Q. Is it true, then, that the amount secured by</p> <p>3 the preferred mortgage -- or the amount under the</p> <p>4 promissory note and secured by the preferred mortgage</p> <p>5 relates not just to boat improvements, but to personal</p> <p>6 loans and fishermen advances that you owed to Del Mar?</p> <p>7 A. Without saying the amounts of anything, I would</p> <p>8 say that's probably true. However, I don't think we</p> <p>9 need to go exactly by these titles, because there's</p> <p>10 going to be some mixed up things in there.</p> <p>11 MR. POULOS: It's noon. Let's take, say, a</p> <p>12 40-minute lunch break.</p> <p>13 (Lunch recess from 12:02 to 12:48;</p> <p>14 Present: Mr. Poulos, Mr. Walsh, and the</p> <p>15 witness)</p> <p>16 MR. POULOS: Q. When we took a break for</p> <p>17 lunch, we were talking about the source of the \$215,000</p> <p>18 in debt that is under the promissory note. Do you</p> <p>19 remember that?</p> <p>20 A. Mm-hmm, yes.</p> <p>21 Q. And if you take a look at Mr. Cantrell's</p> <p>22 memorandum, Exhibit 2, on page 2 we were looking at the</p> <p>23 bullet points there; correct? On page 2 there's bullet</p> <p>24 points "Mexican fishing permit," "boat improvements,"</p> <p>25 "personal loans"?</p>
<p>59</p> <p>1 you actually had and maintained records showing the</p> <p>2 expenditures for boat improvements?</p> <p>3 A. Oh, I never said I didn't.</p> <p>4 Q. Do you have them still?</p> <p>5 A. I'm sure we do. I did not dispose of any.</p> <p>6 Q. Do you know if you have produced them in this</p> <p>7 case?</p> <p>8 A. I have.</p> <p>9 MR. WALSH: Yes, we made them available to you.</p> <p>10 They're sitting waiting for you to investigate. They're</p> <p>11 part of the records that were available that we tried to</p> <p>12 arrange for Max to see last week. They're all there for</p> <p>13 you to see.</p> <p>14 MR. POULOS: Q. How are those arranged down in</p> <p>15 Avila Beach?</p> <p>16 A. On two pallets and one full file cabinet four</p> <p>17 drawers high.</p> <p>18 Q. Do you have a file for boat improvements that</p> <p>19 were made and paid for?</p> <p>20 A. I doubt it.</p> <p>21 Q. So in order to get those records, we've got to</p> <p>22 go through two pallets and a file cabinet worth of</p> <p>23 documents?</p> <p>24 A. Well, I think if you go through two pallets and</p> <p>25 the file cabinet, you're going to get all the things you</p>	<p>61</p> <p>1 A. Yes.</p> <p>2 Q. And "fishing loans."</p> <p>3 In terms of the boat improvements, it then says</p> <p>4 in the memo that your records showed that you had --</p> <p>5 that Joe Cappuccio had advanced \$111,715.78 for boat</p> <p>6 improvements; correct?</p> <p>7 A. That's what this says.</p> <p>8 Q. And you don't have any reason to dispute that,</p> <p>9 do you?</p> <p>10 A. I don't have a reason to dispute it.</p> <p>11 Q. Now, in terms of the personal loans to Barry</p> <p>12 Cohen, is it your testimony that any portion of those</p> <p>13 personal loans were in fact paid to -- used for</p> <p>14 improvements of the Point Loma?</p> <p>15 A. I don't think so.</p> <p>16 Q. What were those personal loans used for?</p> <p>17 A. I can't tell you today. I don't know.</p> <p>18 Q. You had signing authority on a bank account for</p> <p>19 the Olde Port Fisheries Division of Del Mar; right?</p> <p>20 A. For the joint venture?</p> <p>21 Q. Yes.</p> <p>22 A. Yes.</p> <p>23 Q. On a Wells Fargo account; right?</p> <p>24 A. Yes.</p> <p>25 Q. And you wrote checks for the funds used to</p>

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<p style="text-align: right;">98</p> <p>1 A. Yes. And before.</p> <p>2 MR. WALSH: We will provide an insurance</p> <p>3 certificate, if that's the case. The insurance company</p> <p>4 will give us the information.</p> <p>5 MR. POULOS: Q. Who was the insurance company?</p> <p>6 A. They change. Who is it today?</p> <p>7 Q. No, I know who it is today.</p> <p>8 A. Who is it today?</p> <p>9 Q. I've got a certificate.</p> <p>10 A. They just changed it again. It's Chase now.</p> <p>11 Q. Who was it in the last two years; do you</p> <p>12 recall?</p> <p>13 A. No. Let's go before two years and I'll tell</p> <p>14 you who.</p> <p>15 Q. Tell me when the last time you know.</p> <p>16 A. Pettit & Morey (phonetically) at Newport Beach.</p> <p>17 Now I think they're Chase Insurance Company. Same</p> <p>18 place, same people, just a buyout thing.</p> <p>19 MR. POULOS: Q. Has Del Mar Seafoods, Inc.,</p> <p>20 been listed as an additional insured under all the</p> <p>21 insurance policies since the promissory note and</p> <p>22 preferred mortgage were entered into?</p> <p>23 A. I don't think so.</p> <p>24 Q. When was the last time the vessel was</p> <p>25 drydocked, if ever?</p>	<p style="text-align: right;">100</p> <p>1 Q. That's it?</p> <p>2 A. I think so.</p> <p>3 Q. What type of maintenance have you done on the</p> <p>4 vessel in the last year?</p> <p>5 A. I have not done any maintenance on it.</p> <p>6 Q. Have you hired somebody other than Captain</p> <p>7 Kobak and the crew to do any maintenance on the vessel</p> <p>8 in the last year?</p> <p>9 A. If there was any maintenance done -- I'm sure</p> <p>10 there was maintenance done -- but if there's any</p> <p>11 maintenance done, that would be Captain Kobak's</p> <p>12 responsibility and he would take care of it. If</p> <p>13 something doesn't work on the boat, he fixes it or gets</p> <p>14 a new one, whatever he needs to do. He knows that. And</p> <p>15 he just decides what he needs to keep it working right.</p> <p>16 Q. How much income did you receive from the</p> <p>17 fishing operations on the Point Loma in the last fiscal</p> <p>18 year, so in 2007?</p> <p>19 A. I thought I sent you all of the money.</p> <p>20 Q. Do you remember how much you've actually</p> <p>21 earned? Because, actually, it doesn't give us that.</p> <p>22 What it gives -- what you gave me, so the record is</p> <p>23 clear, you gave me at Mr. Cantrell's deposition a stack</p> <p>24 of documents, and I'll put it on the record here in a</p> <p>25 minute.</p>
<p style="text-align: right;">99</p> <p>1 A. If ever? You want to add that, really?</p> <p>2 Q. I'm adding that because I don't want to get an</p> <p>3 objection that I'm assuming something. It's not meant</p> <p>4 to be derogatory. It's if it's ever been done.</p> <p>5 A. It's been done several times. More than</p> <p>6 several times.</p> <p>7 Q. Do you recall when?</p> <p>8 A. No, I don't.</p> <p>9 Q. Do you recall when the last time was?</p> <p>10 A. No.</p> <p>11 Q. Do you recall whether it was in the last five</p> <p>12 years?</p> <p>13 A. I think it was more than five years.</p> <p>14 Q. Do you recall where it was done?</p> <p>15 A. It was either done in Channel Islands or in</p> <p>16 San Pedro, but I think Channel Islands.</p> <p>17 Q. I don't recall the exact words from Captain</p> <p>18 Kobak's deposition yesterday, but he described the</p> <p>19 vessel generally as being in an advanced state of</p> <p>20 disrepair or deterioration. Do you agree with that?</p> <p>21 A. Well, I wouldn't know what he means by that, so</p> <p>22 how would I agree or disagree with it?</p> <p>23 Q. How would you characterize the overall</p> <p>24 condition of the vessel's hull presently?</p> <p>25 A. It needs a paint job.</p>	<p style="text-align: right;">101</p> <p>1 A. Which is the gross receipts for that.</p> <p>2 Q. What I'm asking is the net.</p> <p>3 A. I have no idea.</p> <p>4 Q. You have -- as the vessel owner, you receive 50</p> <p>5 percent of the net income from the vessel after the</p> <p>6 deduction of fuel and ice expenses; is that right?</p> <p>7 A. That's correct.</p> <p>8 Q. The other 50 percent goes to the crew; correct?</p> <p>9 A. Correct. And the captain.</p> <p>10 Q. Right. The captain. From the 50 percent that</p> <p>11 you receive, you have to pay for the dockage of the</p> <p>12 vessel; right?</p> <p>13 A. Yes.</p> <p>14 Q. How much is that?</p> <p>15 A. It's \$1200. I don't know if that's monthly or</p> <p>16 once every two months. I'm not sure. But it has a</p> <p>17 place in San Francisco. So whatever the dockage charge</p> <p>18 is, I forget, but I send them a check when I get the</p> <p>19 bill.</p> <p>20 Q. You pay for insurance from that 50 percent?</p> <p>21 A. Sure.</p> <p>22 Q. How much is the insurance?</p> <p>23 A. In the neighborhood of \$25,000 a year.</p> <p>24 Q. From that 50 percent, you pay for maintenance</p> <p>25 of the vessel; correct?</p>

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<p style="text-align: right;">114</p> <p>1 MR. WALSH: That's correct.</p> <p>2 MR. POULOS: So we've got a stipulation on the</p> <p>3 record that attorneys who were retained by Mr. Cohen</p> <p>4 have possession of the Miller Starr Regalia invoices?</p> <p>5 MR. WALSH: That's correct.</p> <p>6 MR. POULOS: All right.</p> <p>7 Q. Did you read the responses to requests for</p> <p>8 production before you verified them, Mr. Cohen?</p> <p>9 A. I did.</p> <p>10 Q. Did you read your responses to interrogatories</p> <p>11 before you verified them?</p> <p>12 A. I read them. I read them twice.</p> <p>13 Q. Did you understand in verifying them that you</p> <p>14 were swearing that they were true under penalty of</p> <p>15 perjury?</p> <p>16 A. I understand that.</p> <p>17 Q. You are making a claim in this case for damages</p> <p>18 arising from the arrest of the vessel; is that correct?</p> <p>19 A. That is correct.</p> <p>20 Q. And what damages are you claiming that you</p> <p>21 incurred as a result of the arrest of the vessel?</p> <p>22 A. I thought you had that.</p> <p>23 Q. I'm asking you to tell me what you believe to</p> <p>24 be the damages.</p> <p>25 A. My attorney fees, the loss of revenue from the</p>	<p style="text-align: right;">116</p> <p>1 Q. The fishing net that you're claiming was lost</p> <p>2 as a result of the arrest was not on the same pier as</p> <p>3 the Fishing Boat Point Loma at the time of the arrest,</p> <p>4 was it?</p> <p>5 A. Say that again.</p> <p>6 Q. The fishing net was actually at a different</p> <p>7 pier than the Point Loma was at, at the time of the</p> <p>8 arrest?</p> <p>9 A. I don't know.</p> <p>10 Q. Have you spoken with Captain Kobak about the</p> <p>11 circumstances of the loss of the fishing net?</p> <p>12 A. Yes.</p> <p>13 Q. Did Captain Kobak tell you that the fishing net</p> <p>14 went missing sometime around July 20th of 2007?</p> <p>15 A. To answer that question, I don't know; I don't</p> <p>16 know the dates. But I know, in reference to the boat</p> <p>17 being arrested, it was missing after the boat was</p> <p>18 arrested.</p> <p>19 Q. Do you recall Captain Kobak telling you that he</p> <p>20 thought the fishing net had been stolen by the crew on a</p> <p>21 vessel called the "Karen"?</p> <p>22 A. He mentioned that was one of his ideas. It was</p> <p>23 a speculation, though. It was not from anything other</p> <p>24 than speculation. That's my understanding of what he</p> <p>25 said.</p>
<p style="text-align: right;">115</p> <p>1 boat not being able to go fishing, my costs and</p> <p>2 expenses. That's all I can think of this minute, as of</p> <p>3 this moment.</p> <p>4 Q. Are you making a claim for damages for the loss</p> <p>5 of a fishing net?</p> <p>6 A. Yes.</p> <p>7 Q. Did you authorize your attorneys to present a</p> <p>8 claim to the United States Marshal for the Northern</p> <p>9 District of California for the value of the loss of the</p> <p>10 fishing net?</p> <p>11 MR. WALSH: Objection. Don't answer that</p> <p>12 question. It implicates attorney-client privilege.</p> <p>13 MR. POULOS: Q. Are you aware that a claim was</p> <p>14 made to the United States Marshal Service for the</p> <p>15 Northern District of California for the loss of the net?</p> <p>16 A. I don't think I should answer that.</p> <p>17 MR. WALSH: Yes or no, are you aware?</p> <p>18 THE WITNESS: No. At this moment I'm not</p> <p>19 aware.</p> <p>20 MR. POULOS: Q. What was the date that the</p> <p>21 fishing net was last -- withdrawn.</p> <p>22 The fishing net that you're claiming was lost</p> <p>23 as a result of the arrest of the vessel was not on the</p> <p>24 vessel at the time of the arrest; is that true?</p> <p>25 A. To my understanding, that's true.</p>	<p style="text-align: right;">117</p> <p>1 Q. Are you aware that Captain Kobak filed a police</p> <p>2 report for the theft of the fishing net?</p> <p>3 A. He told me he did.</p> <p>4 Q. Have you seen a copy of that?</p> <p>5 A. Like that (snapping fingers), today. I didn't</p> <p>6 even read it. Just saw it slide on the table.</p> <p>7 Q. You're talking about that little piece of</p> <p>8 paper?</p> <p>9 A. No. Before we got here.</p> <p>10 Q. The main police report?</p> <p>11 A. Yes. I didn't get to look at it or anything.</p> <p>12 It just went by. So I can say I saw it, but I didn't</p> <p>13 get the chance to look at it. He told me that he</p> <p>14 notified the harbor, the police. I told him every place</p> <p>15 to try to find the net. And I think he did the best he</p> <p>16 could to try to find the net. I don't know.</p> <p>17 Q. Do you recall how long after the vessel was</p> <p>18 arrested that the fishing net was found to be missing?</p> <p>19 A. A short time after.</p> <p>20 Q. I will represent to you that Captain Kobak</p> <p>21 testified yesterday that it wasn't missing until July --</p> <p>22 or went missing, I think is his term, until on or around</p> <p>23 July 20th of 2007. Does that refresh your recollection?</p> <p>24 A. No. When was the boat arrested?</p> <p>25 Q. June 7th of 2007.</p>

30 (Pages 114 to 117)

BARRY ALLEN COHEN

January 9, 2008

<p style="text-align: right;">134</p> <p>1 MR. WALSH: Objection. I don't think it's been 2 established it's an e-mail. Whatever you want to call 3 it, piece of paper, I'm not sure it's an e-mail. 4 MR. POULOS: On Exhibit 7 -- it's the same as 5 what's on the Exhibit 7, right? 6 THE WITNESS: It's the same date on both of 7 them. 8 MR. POULOS: Q. Okay. Does tying those two 9 things together -- the fact that the check is dated 10 January 30th and the Exhibit 7 is dated January 30th -- 11 does that help refresh your recollection as to whether 12 you are the author of Exhibit 7? 13 A. No. 14 Q. The next page is a check dated February 15th, 15 2007, for \$3,000. Is that right? 16 A. Correct. 17 Q. Okay. And is that also a check that you wrote 18 on the Point Loma checking account to Del Mar Seafoods 19 for payment? 20 A. Correct. 21 Q. And when you wrote "on account," what account 22 were you referring to? 23 A. This was on the note account. 24 Q. And the same goes for the first page, where it 25 says "on account"?</p>	<p style="text-align: right;">136</p> <p>1 (Whereupon, Exhibit 11 was 2 marked for identification.) 3 MR. POULOS: Q. That is the check for \$175,000 4 that you've testified about making; is that right? 5 A. Correct. 6 Q. And that was a check that you believe should 7 have been applied to the balance under the promissory 8 note; correct? 9 A. Correct. And this is a copy of the check; not 10 the check. 11 Q. Right. You delivered that check in person; 12 correct? 13 A. Correct. 14 Q. And you first took it to Joe Cappuccio when he 15 was in his office; is that right? 16 A. That's the only place I took it. 17 Q. Didn't he tell you to take that over to Joe 18 Roggio? 19 A. No. 20 Q. So he accepted the check -- is your testimony? 21 A. That's my testimony. 22 Q. Can you tell me when that occurred, when you 23 actually handed that to him, that check? 24 A. I can't say exactly, but it had to be very 25 close to that date. I don't think that I held onto it.</p>
<p style="text-align: right;">135</p> <p>1 A. Correct. 2 (Discussion off the record) 3 MR. POULOS: Q. You have the other \$3000 4 check? 5 A. Yes. 4-23 is the date on it. 6 Q. So the next page is the check dated 4-23 for 7 \$3,000? 8 A. That's what I have. 9 Q. Yes. Okay. That also is a check written on 10 your F/V Point Loma account signed by you; correct? 11 A. Correct. 12 Q. Do you believe that those are the three checks, 13 then, that are reflected on Exhibit 8 as payments on 14 account? 15 A. Say that again. 16 Q. Do you believe that those, then, are the three 17 checks that are reflected on Exhibit 8? 18 A. On this? 19 Q. Yes, as payments on account. 20 A. I believe they are. 21 Q. Now, you had made -- at the heart of this case 22 is your payment of \$175,000; correct? 23 A. Correct. 24 MR. POULOS: Let's have that marked as Exhibit 25 11.</p>	<p style="text-align: right;">137</p> <p>1 I think I made it the day I gave it to him. 2 Q. So you think you gave it to him on November 9th 3 of 2005? 4 A. I believe so. But I want to correct one thing 5 because I just want this understood. I know for sure 6 that I handed this check to Joe Cappuccio, because when 7 I saw Joe Roggio I told him I want to give this to Joe 8 myself. 9 I gave it to Joe Cappuccio. He looked at it 10 and said -- I said, "Here's the check that I said I 11 would give." He said, "Thank you very much." And I 12 said, "I'll pay you the rest as soon as I can." And he 13 said, "Well, I'm not worried about" -- "I'm not 14 concerned" or "not worried about it; it's such a small 15 amount now." 16 After that point, I don't know; I don't 17 remember if he gave me back the check and I took it. I 18 don't remember that at all. So if somebody is saying 19 that's what happened, that may have been, because all I 20 remember very clearly in my mind is I handed him the 21 check because I knew it was important to him, and I know 22 he thanked me and said he wasn't worried about the rest 23 because I told him I would pay as soon as I can. He 24 said, "Whatever you can do, I'm not worried about it 25 anymore; it's such a small amount." After that point I</p>

35 (Pages 134 to 137)

BARRY ALLEN COHEN

January 9, 2008

<p style="text-align: right;">138</p> <p>1 don't remember really. So if I took it or they're</p> <p>2 saying I took it to Joe Roggio, it's possible, but I</p> <p>3 don't remember that. That's for clarification.</p> <p>4 Q. Fine. What else do you recall, if anything,</p> <p>5 about the conversation that you had with Joe Cappuccio?</p> <p>6 Was there more to it than that, or is that all that you</p> <p>7 remember?</p> <p>8 A. I think that was the whole conversation.</p> <p>9 Q. So I take it this whole exchange probably</p> <p>10 lasted less than a minute?</p> <p>11 A. Maybe two. Yes, very short.</p> <p>12 Q. And you don't remember, then, any conversation</p> <p>13 with Joe Roggio about this check because you don't</p> <p>14 remember whether you took it to him or not, so I'm</p> <p>15 assuming you don't remember a conversation?</p> <p>16 A. I didn't think I took it to him, but I just got</p> <p>17 the feeling, because you asked that question, that maybe</p> <p>18 somebody said I did. And maybe somebody will remember</p> <p>19 something I don't. All I'm going to tell you is this is</p> <p>20 what I remember; that's what I don't remember. I</p> <p>21 thought I just left. If I took the check, if he said,</p> <p>22 "Take it to Joe Roggio," I don't remember that at all.</p> <p>23 Q. Okay. And do you remember whether you had any</p> <p>24 subsequent -- on that day or others -- conversations</p> <p>25 with Joe Roggio about this payment?</p>	<p style="text-align: right;">140</p> <p>1 THE WITNESS: Want me to answer it again? Not</p> <p>2 the whole big dissertation I made; right?</p> <p>3 Joe Cappuccio asked me to do something like</p> <p>4 this.</p> <p>5 MR. POULOS: Q. Did he specify the amount?</p> <p>6 A. No, he told me what the problem was, that he</p> <p>7 needed my help, and I said I would see what I could do.</p> <p>8 And this is what I could do.</p> <p>9 Q. When was that conversation? I'm sorry. Did</p> <p>10 you say Roggio or Cappuccio?</p> <p>11 A. Cappuccio.</p> <p>12 Q. When did you have that conversation with Joe</p> <p>13 Cappuccio?</p> <p>14 A. Of him asking me if I could help him do this?</p> <p>15 Q. Yes.</p> <p>16 A. I would guess -- my best estimate -- a couple</p> <p>17 of months before this check, because after he asked, I</p> <p>18 went home, talked to my wife about it and went about</p> <p>19 trying to get a second on the house. So, however long</p> <p>20 that took, that's when I did it. I didn't wait a month</p> <p>21 or two; I tried to do it when he asked me. And I told</p> <p>22 you why he said he needed it: Because the bank that he</p> <p>23 gets his credit line with was unhappy with that type of</p> <p>24 loan on his books.</p> <p>25 And Joe Cappuccio -- what he said to me was the</p>
<p style="text-align: right;">139</p> <p>1 A. I don't know. I don't know in what context</p> <p>2 you're talking about. I gave the check to Joe. Is that</p> <p>3 what you mean?</p> <p>4 Q. No. I just want to know what other</p> <p>5 conversations, if any -- and I'm not saying there were;</p> <p>6 I'm not saying there weren't. I'm asking you, did you</p> <p>7 have any other conversations or any conversations with</p> <p>8 Joe Roggio about this check that you remember? I don't</p> <p>9 want to hear at trial, "Oh, I remember I had a</p> <p>10 conversation with Joe." Tell me if you do or you don't.</p> <p>11 It's that simple.</p> <p>12 A. I'm not going to do that. I don't remember any</p> <p>13 after. I don't know for how long a period of time</p> <p>14 you're talking. A week later, did I? I don't know. A</p> <p>15 week before? Yeah, I'm sure I did. I know I told Joe</p> <p>16 Roggio I was coming. He knew I was coming because I</p> <p>17 went to him first and said, "I made the check out and I</p> <p>18 want to give it to Joe myself," because I thought it was</p> <p>19 my place to do that. And pretty much, that's what I</p> <p>20 remember about the actual giving of the check.</p> <p>21 Q. How did the giving of this check come about?</p> <p>22 Why did you give them -- let me rephrase.</p> <p>23 Why did you give them a check for 175?</p> <p>24 MR. WALSH: Objection. Asked and answered.</p> <p>25 You can answer it again.</p>	<p style="text-align: right;">141</p> <p>1 bank said: We're the bank and you're the fish company;</p> <p>2 we don't want to see those loans on your books when you</p> <p>3 borrow money from us. That's what he told me and it</p> <p>4 made sense. So I said, "I'll do what I can," and that's</p> <p>5 how this came about. And that's why I was so emphatic</p> <p>6 that it was for the note on the boat, because that was</p> <p>7 the whole purpose of doing this. They didn't ever say</p> <p>8 anything about receivables or this. That's why he had a</p> <p>9 line of credit -- to fund his receivables. What he told</p> <p>10 me is they just didn't like seeing that note that I had</p> <p>11 with them that Chris and I signed. And this was to pay</p> <p>12 down that note that much.</p> <p>13 Q. Do you remember anything else about the</p> <p>14 conversation, besides what you've told me so far?</p> <p>15 A. With Joe Cappuccio?</p> <p>16 Q. Right.</p> <p>17 A. That's the essence of it. I don't remember</p> <p>18 words verbatim, but he told me that the bank</p> <p>19 dah-dah-dah -- the things I just said, and this is the</p> <p>20 result of what he asked me to do.</p> <p>21 Q. Okay. Do you recall -- you've mentioned a</p> <p>22 conversation you had with Joe Roggio before this payment</p> <p>23 was made in which you told Joe that you wanted to give</p> <p>24 Joe Cappuccio the check personally.</p> <p>25 A. Yeah.</p>

36 (Pages 138 to 141)

EXHIBIT 2

Olde Port Fisheries Balances (Avila Beach JV)										
Date	Activity	Loan Activity Amount	M. Cohen	OP Fishery	OP Inn	Inventory	Port San Luis Case	Barry Note Principal Balance	Principal Balance For Interest Calc. Days	7% Interest Balance
10/31/03	Beginning Balances	215,000.00						215,000.00	215,000.00	
01/01/04	Barry/Point Loma Advances	11,767.38						226,767.38	226,767.38	61
03/01/04	Barry/Point Loma Advances	1,768.00						228,535.38	228,535.38	60
05/01/04	Barry/Point Loma Advances	3,500.00						232,035.38	232,035.38	60
09/30/04	Point Loma AP Balance	16,021.31						248,056.69	248,056.69	149
09/30/04	Advance to Close Avila Debits	42,372.74	13,920.40		18,069.10	10,363.24		290,429.43		
12/22/04	Barry Paymt	(5,000.00)						285,429.43	243,056.69	82
06/24/05	American Payment	(1,474.75)				(1,474.75)		283,954.68		
09/14/05	Olde Port PYMT	(1,000.00)				(1,000.00)		282,954.68		
11/10/05	Inventory Adjustment	(1,300.00)				(1,300.00)		281,654.68		
11/10/05	Barry Paymt (175,000)	(175,000.00)	(13,920.40)		(18,069.10)	(6,808.49)		106,654.68	106,654.68	318
12/05/06	Olde Port AP Balance	7,417.67		7,417.67				114,072.35		
	Point Loma AP Balance	1,368.82						115,441.17	108,023.50	385
	Fees for Port San Luis Case	21,308.52					21,308.52	136,749.69		
02/05/07	Barry Paymt	(2,000.00)						134,749.69	106,023.50	60
02/20/07	Barry Paymt	(3,000.00)						131,749.69	103,023.50	15
04/25/07	Barry Paymt	(3,000.00)						128,749.69	100,023.50	65
12/31/07	Balance of Interest Calc.								4,784.32	246
Totals			-	7,417.67	-	-	21,308.52	128,749.69		49,207.70

Balance with Interest

177,957.39

49,207.70

1/10/2008

Damages spreadsheet.xls

DMSI 0269

EXHIBIT 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

---oOo---

CERTIFIED COPY

JG Jane GROSSMAN
RS REPORTING Services

DEL MAR SEAFOODS, INC.,)

Plaintiff,)

vs.)

No. C-07-2952-WHA

BARRY COHEN, CHRIS COHEN)
(aka CHRISTENE COHEN), in)
personam, and F/V POINT LOMA,)
Official Number 515298, a)
1968 steel-hulled, 126-gross)
ton, 70.8 foot long fishing)
vessel, her engines, tackle,)
furniture apparel, etc., in)
rem, and Does 1-10,)

Defendants.)

DEPOSITION OF JOSEPH ROGGIO

December 13, 2007

Taken before JANE GROSSMAN

CSR No. 5225

JANE GROSSMAN REPORTING SERVICES
Certified Shorthand Reporters
1939 Harrison Street, Suite 460
Oakland, California 94612
(510) 444-4500

DEPOSITION OF JOSEPH ROGGIO

1 MR. WALSH: Q. Did you yourself check with
2 regard to the Vessel Documentation Center, U.S. Coast
3 Guard -- did you ask for an abstract of title?

4 A. No.

5 Q. Did you ever send any letter to either
6 Mr. Cohen or Mrs. Cohen with regard to these issues to
7 seek clarification?

8 A. Well, clarification of what?

9 Q. The debt that was owed.

10 A. Well, I just know that when we recorded the
11 note with the National Vessel Documentation Center, they
12 sent us the document back with a stamp. And since then
13 it has been placed in the file.

14 Q. The question is this: Did you or
15 Joe Cappuccio draft a letter to Mr. or Mrs. Cohen that
16 said, "We're concerned about you paying back your note.
17 What are your circumstances?"

18 A. Did we write a letter? No.

19 Q. You did not. Okay.

20 Let's go back to Exhibit 2, if you would. I
21 would like you to go to page 6.

22 Are we on the same page?

23 A. Page 6.

24 Q. Good. Thank you.

25 Now, I believe it's correct that you have

1 asserted that, in addition to the note amount of 215,000,
2 there were advances made under the note; is that correct?

3 A. Well, there were additional charges that Barry
4 made that I considered fell under the note.

5 Q. You considered?

6 A. Yeah. Well, I'm talking about the charges for
7 the *Point Loma*.

8 Q. Well, we'll get to that.

9 So, the position is that in addition to the
10 215,000 original amount of the note, Barry and his wife
11 both agreed to add certain advances to the note and the
12 mortgage; is that correct?

13 A. Well, what amounts are you talking to?

14 I just know that these amounts here
15 (indicating) that you have highlighted on your page that
16 I can see were discussed by me and Barry about adding
17 those to his balances. And I took that as being part of
18 the funds that Barry owed Del Mar Seafoods.

19 Q. Under the note?

20 A. I assumed under the note.

21 Q. You assumed?

22 A. Well, I think we both assumed that he was
23 talking about -- when he said to add to his balance, his
24 balance is the note.

25 Q. So, the operative words that triggered your

1 assumption were "his account"? Is that what he said,
2 "Add these to my account"?

3 A. He said -- I remember "add to his balances."
4 Now, if he used the word "account" -- you're
5 going to have to ask him.

6 Q. I'm just asking --

7 A. I recall him saying "balances."

8 Q. Balances. Okay.

9 A. "Balances" to me means add it to his account
10 balance.

11 Q. Did you ever have any kind of conversation
12 about these transactions with Chris Cohen?

13 A. Well, the joint venture agreement was between
14 Barry and Joe, not Chris.

15 This had to do with what was left over after
16 when we set down the joint venture operation.

17 MR. WALSH: Move to strike as nonresponsive.

18 Q. The question is, Did you ever have any
19 conversation with Chris Cohen about any of these
20 business dealings?

21 A. We weren't in a joint venture with
22 Chris Cohen.

23 Q. So, the answer is no?

24 MR. POULOS: Just he's looking for a "yes" or
25 "no."

EXHIBIT 4

11/19/2008 12:01 PM 828 833 4140.

MILLER STARR

000004

11-15-2005 08:55AM FROM-DEL MAR SEAFOODS INC Om

T-131 P.002/006 F-230

Del Mar Seafoods, Inc.
Schedule of Payments

	Michael Cohen	Olde Port Inn	Vyvolary	Point Loma	Bary	Total
Beginning Balance	13,820.48	10,080.10	10,883.24	18,021.31	257,035.48	285,420.59
12/23/2004 Bary Paymt					(5,000.00)	(5,000.00)
07/24/2005 American Payment			(1,474.75)			(1,474.75)
07/14/2005 Olde Port PYMT			(1,000.00)			(1,000.00)
11/10/2005 Inv. Adj			(1,000.00)			(1,000.00)
11/10/2005 Payment from Bary	(13,820.48)	(10,080.10)	(10,883.24)	(18,021.31)	(120,380.70)	(175,000.00)
Ending Balance					131,654.78	131,654.78

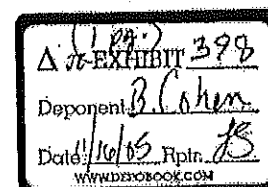
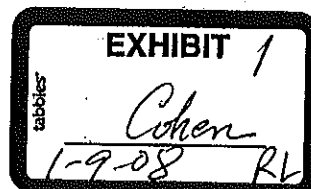


EXHIBIT 5

From: 8316478465 Page: 2/14 Date: 12/12/2007 4:06:12 PM

Memorandum

COPY

To: Barry Cohen, Joe Roggio & Gene Glaser
From: David Cantrell, CPA
Regarding: Cappuccio/Cohen Joint Venture
Date: August 30, 2002
Page 1 of 4

Background

The following is a summary of my understanding of the events that have occurred in connection with the formation of the Cappuccio/Cohen joint venture. Please take note, that I am not familiar with Mexican corporate or tax laws and can not address any related issues.

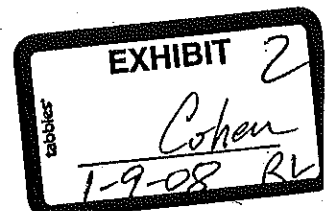
In October of 2001 Barry Cohen & Joe Cappuccio agreed to form a joint venture to operate the Point Loma fishing vessel in Mexico. To accomplish their goal, they formed a Mexican corporation. The Mexican corporation is owned 51% by a Mexican national and 49% by Cohen & Cappuccio as equals. The value or cost of the stock is not known by me at this time, but it is my understanding that it is low.

The Mexican corporation was formed to operate the Point Loma in Mexican waters, but not to own it. A Mexican fishing license was obtained by the Mexican corporation and the Point Loma was registered as a Mexican vessel. The cost to complete these tasks was \$97,000 which was loaned to the Mexican corporation by Joe Cappuccio. Various improvements have been made to the Point Loma to make it ready for operating the joint venture. These improvements have been funded by Cohen and Cappuccio. In addition, Cappuccio has loaned funds to the Mexican corporation to fund its initial operations. Starting in December of 2001, the Mexican corporation paid rent to Cohen for the use of the boat at the rate of \$3,500 per month. The rent was used by Cohen to pay the loans on the boat.

The Point Loma is currently owned by Barry & Chris Cohen. The boat was subject to a loan from the SBA in the original amount of \$219,000. The lender that held the SBA loan would not allow the registration to be transferred to Mexico. As a result, the Cohen's obtained a loan secured by their personal residence in the approximate amount of \$139,000. They also obtained a 2nd loan on their home and a vehicle in the amount of \$80,000. The proceeds were used to pay off the SBA loan. In addition, the Cohen's borrowed \$35,000 from Coast National Bank to help fund the improvements made by them. The Coast National loan is unsecured.

Barry Cohen provided schedules of the funds he has expended related to the refurbishment of the boat and to carry the Point Loma operation since the joint venture was formed.

Gene Glaser provided a schedule of the funds expended by Joe Cappuccio related to the joint venture and amounts loaned to Barry Cohen as fishermen advances. His schedule showed the following items:



From: 8316478465 Page: 3/14 Date: 12/12/2007 4:06:12 PM

Memorandum

To: Barry Cohen, Joe Roggio & Gene Glaser
 From: David Cantrell, CPA
 Regarding: Cappuccio/Cohen Joint Venture
 Date: August 30, 2002
 Page 2 of 4

• Mexican fishing permit	\$97,000
• Boat improvements	84,000
• Personal loans to Barry Cohen	62,004
• "Fishing loans" prior to J.V.	53,411

I asked Barry Cohen to review the data provided by Gene Glaser. He agreed that \$97,000 was expended for the permit and that his personal loans were \$62,004. He also agreed that Joe advanced funds that were used for the Point Loma refurbishment. However, according to Barry, the funds labeled as "Fishing loans" prior to J.V., do not agree with his records. Olde Port Fisheries maintained a receivable account for funds advanced to fishermen. These funds are ordinarily repaid by the fisherman when they sell their catch to the company. Barry had such an account for the Point Loma for the period prior to the formation of the joint venture. The amount owed as of December 2001 for these advances was \$16,394.75. Therefore the total owed to Cappuccio was \$78,398.75 (\$62,004 + \$16,394.75). According to Barry's records, Joe advanced \$111,715.78 for boat improvements. Schedule 1 gives the detail according to Barry's records and a reconciliation to Gene's data. In summary, Gene's data indicates that Joe advanced \$9,300 more than Barry's records show. This difference is explained on Schedule 1.

The joint venture has been operating without a formal structure since the October of 2001.

Joint Venture Structural Goals

NO JOINT VENTURE

Based on discussions with Gene Glaser and Barry Cohen the Joint Venture should be structured to meet the following goals:

- Cappuccio and Cohen are to be equal owners of the joint venture operation.
- Any profit or loss sustained by the joint venture should be borne equally by Cohen and Cappuccio.
- The Point Loma should be owned by the joint venture.
- The ownership of the Mexican corporation should be held by the joint venture.
- Loans to the Mexican corporation for the fishing license should be an asset of the joint venture.
- The debts related to the Point Loma should be assumed by the joint venture.
- The rights to operate the vessel in Mexican and US waters should be held by the joint venture.
- Each owner wants to limit their liability to their invested capital.
- Each owner wants the ability to continue the operation of the joint venture in the event of the death, disability or insolvency of the other owner.
- Each owner wants to provide for the orderly liquidation of their ownership for the benefit of their heirs.

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- Any fish acquired by the Point Loma will be sold to Olde Port Fisheries at normal market prices.
- The terms and structure of the existing arrangement between Olde Port Fisheries and Del Mar Seafoods should not be incorporated into the joint venture structure. If it is necessary to formalize this arrangement it should be done separately.
- The Mexican corporation should not have significant profits or cash flow beyond what is necessary to carry its operations and pay its debts to the joint venture.
- Any funds loaned by Del Mar to the Mexican corporation for operations will be owed to Del Mar and not recorded on the joint venture books.

Suggested Structure

- Form a California based Sub-S Corporation owned equally by Cohen and Cappuccio. Report the activity for 2002 prior to the formation of the Sub-S Corporation as a general partnership owned by Cohen & Cappuccio.
- Each party will contribute the assets and debts they currently hold to the Corporation under IRC Section 351. Since the debts on the Point Loma is currently secured by Cohen's home and personal assets, the corporation will have to enter into some type of contract or note with the Cohen's to assume the debts. It is expected that Coast National Bank will transfer its note to the corporation. Schedule 2 listed the assets and debts to be contributed:
- The Mexican corporation should enter into a rental agreement for the use of the Point Loma. The monthly rental should be sufficient to provide a reasonable return to the joint venture on its investment of \$400,000 and to cover the related debt service. Presumably the rents will be an expense for the Mexican corporation. Joe and Barry should establish the fair rental amount.
- The price paid for fish acquired from the Mexican corporation should be as low as possible. However, the Mexican corporation will need sufficient profits to retire its debts to the Sub-S Corporation.
- Cohen and Cappuccio will presumably be the only officers and employees of the Sub-S Corporation. They should, if operations allow, receive a reasonable salary for their services. It is my expectation that the services will be minimal and therefore the salaries will be low.
- If the Sub-S Corporation has profits after paying its expenses, they should be distributed to the shareholders as dividends.
- The Sub-S Corporation will record the purchase of fish from the Mexican Corporation and sell it to Olde Port Fisheries at current market prices. Accordingly, it may need a license of some type to operate in this manner.
- The shareholders should consider a buy-sell agreement to deal with the possibility of something happening to one of the shareholders.

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Alternate Structure

The above structure contemplates that each partner will contribute their assets to a general partnership as of 1/1/02. As a result, the joint venture would have to use each partner's basis in the various assets for tax purposes. Cohen's basis in the boat is about \$228,000 while the agreed value is \$400,000. The partners would only be able to depreciate the \$228,000 basis. This structure is in compliance with tax law and benefits Cohen because he gets credit for the value of the boat without having to pay tax on the difference between his basis and its actual value. However, the structure is not necessarily good for Cappuccio because he is in effect paying \$200,000 for one-half of the boat but can only depreciate about \$114,000. One of the assets being contributed by Cappuccio is his receivable from Cohen for \$78,398.75. This asset can not be depreciated and therefore would not generate any tax deductions to the partners. Collecting the receivable would not generate taxable income either. I think we should consider the alternative of Cohen selling a partial interest in the boat to Cappuccio prior to the formation of the partnership. Cappuccio would use the debt from Cohen as the payment for the partial interest and would assume a proportionate amount of the existing boat loans. This would give Cappuccio basis in the boat of about \$173,000. Cohen would not have to repay the receivable, but would have to recognize taxable income on the sale to Cappuccio. I estimated the tax to Cohen at about \$15,000. Schedule 3 shows how the sale might work. If this alternative sounds interesting to both partners we can work out the details later.

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Schedule 1
Schedule of Point Loma Advance Account per Olde Port Fisheries Books

Date	Check #	Advance to Fisherman	Repayment by Fisherman	Due for Fisherman Advances	Advance for Boat Refurb.	Total for Boat Refurb.
Balance at 12/31/00		14,094.75		14,094.75		-
01/29/2001	2804	2,000.00		16,094.75		-
02/04/2001	2821	6,000.00		22,094.75		-
02/09/2001			(6,000.00)	16,094.75		-
03/02/2001	2892	4,000.00		20,094.75		-
03/08/2001	2911	6,000.00		26,094.75		-
03/16/2001	2941	2,000.00		28,094.75		-
03/22/2001	2988	2,500.00		30,594.75		-
03/23/2001			(2,500.00)	28,094.75		-
03/28/2001			(1,000.00)	27,094.75		-
04/03/2001			(2,000.00)	25,094.75		-
04/24/2001	3040	2,000.00		27,094.75		-
04/30/2001			(18,000.00)	12,094.75		-
08/27/2001	3381	4,000.00		16,094.75		-
09/03/2001	3393	5,000.00		21,094.75		-
10/23/2001	3609			21,094.75	4,000.00	4,000.00
11/03/2001	3626			21,094.75	7,000.00	11,000.00
11/05/2001	3650			21,094.75	4,000.00	15,000.00
11/08/2001	3667			21,094.75	10,000.00	25,000.00
11/14/2001	3690			21,094.75	10,000.00	35,000.00
11/23/2001	3715			21,094.75	4,000.00	39,000.00
11/27/2001	3734			21,094.75	6,000.00	45,000.00
11/30/2001	3736			21,094.75	1,000.00	46,000.00
12/03/2001	3742			21,094.75	2,000.00	48,000.00
12/03/2001	Credit for fish		(9,400.00)	11,694.75		48,000.00
001	3755			11,694.75	2,000.00	50,000.00
001	3760			11,694.75	2,000.00	52,000.00
12/09/2001	3764			11,694.75	5,000.00	57,000.00
12/12/2001	3772			11,694.75		57,000.00
12/19/2001	3787			11,694.75	8,000.00	65,000.00
12/26/2001	3804			11,694.75	5,000.00	70,000.00

Sub-total of 2001 items	47,594.75	(35,900.00)		70,000.00	70,000.00
Correct credit for fish	4,700.00		16,394.75		
Revised totals for 2001	52,294.75	(35,900.00)	16,394.75		

01/14/2002	3840			5,000.00	75,000.00
01/17/2002	3858			5,000.00	80,000.00
01/24/2002	3876			7,000.00	87,000.00
01/31/2002	3890			8,000.00	95,000.00
02/06/2002	3,910.00			1,000.00	96,000.00
02/07/2002	3,014.00			2,986.00	98,986.00
02/11/2002	3,918.00			2,000.00	100,986.00
02/14/2002	3,939.00			2,000.00	102,986.00
02/20/2002	3,961.00			2,500.00	105,486.00
02/26/2002	3,985.00			2,790.00	107,790.00
Oct thru Feb fuel bills paid by Del Mar for Point Loma				3,928.78	111,715.78
Sub-total of 2002 items				41,715.78	
Total funds advanced by Joe for boat improvements					111,715.78

Reconciliation to Data provided by Gene Glaser to Olde Port Fisheries Records

Gene's data after correction	
Boat improvement funds as of 12/31/01	\$ 84,000.00
Less correction to 12/31/01 balance	(14,000.00)
Plus correction of credit for fish	4,700.00
Fishing loans per Gene's data	53,411.00
Gene's data after corrections	\$ 128,111.00

Olde Port Fisheries Records	
Boat improvement funds	\$ 111,715.78
Fishing loans	16,394.75
Total per Barry's data	\$ 128,110.53

due due to rounding 0.47

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Schedule 2

Joe Cappuccio/Barry Cohen Joint Venture

Summary of Assets & Liabilities Contributed to JV

Contributions by Barry Cohen

Point Loma Fishing Vessel

Agreed Value before recent improvements

400,000.00

Less:

Boat loan, due to Barry & Chris Cohen to

off-set loan on their home

(139,000.00)

Boat loan, due to Barry & Chris Cohen to off-set

the 2nd loan on their home and vehicle

(80,000.00)

Equity in Point Loma

181,000.00

Capitalized loan fees

5,426.00

Less accumulated amortization

(513.00)

4,912.00

4,912.00

Improvements & capitalized costs

2001 Improvements

October

8,809.00

November

22,906.00

December

20,536.00

52,250.00

Less accumulated depreciation

(653.00)

51,597.00

51,597.00

2002 Improvements, Labor & other costs

January

36,369.92

February

13,628.40

March

16,792.80

April

22,754.78

Fuel bills paid by Olde Port Fisheries

3,925.78

93,469.68

93,469.68

Total improvements

145,066.68

Less: Improvements funded by Coast National

Bank loan assumed by new entity

(32,557.00)

(32,557.00)

Less improvements funded by Cappuccio

(111,715.78)

Equity in improvements funded by Cohen

793.90

Value of California/USA fishing licenses

100,000.00

Equity in assets contributed by Barry Cohen

286,700.90

Contributions by Joe Cappuccio

Loan to Mexican corporation related to

Mexican license

97,000.00

97,000.00

Boat improvements

111,715.78

Funds owed to Joe Cappuccio by Cohen

"Fishing loans" prior to J.V.

10,394.75

Assignment of debt from Barry Cohen, held

by Joe Cappuccio

62,004.00

Total due from Cohen

78,398.75

78,398.75

Equity in assets contributed by Joe Cappuccio

287,114.53

Difference in equities: Cohen over(under) Cappuccio

(408.63)

Does Joe Agree

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Schedule 3

Gain on Sale of Partial Interest in Point Loma

	Cohen	Cappuccio	Total
Point Loma Boat	226,743.09	173,256.91	400,000.00
Less debts	(124,141.84)	(94,858.16)	(219,000.00)
Equity	102,601.25	78,398.75	181,000.00

Percent sold 43.31%

	Basis before Sale	Sold Basis	Remaining Basis
Basis to Barry			
Boat	200,607.00	86,848.06	113,658.94
2001 Improvements	52,250.00	22,631.68	29,618.32
Capitalized fees	5,425.00	2,349.80	3,075.20
Less depre	(30,076.00)	(13,027.19)	(17,048.81)
	228,106.00	98,802.35	129,303.65

Gain on sale 74,454.56

Ordinary income gain 13,027.19
 Long-term cap gain 61,427.37
 Less cap gain loss C/F (22,536.00)
 Net Cap Gain 38,891.37

Estimated tax Fed
 Ordinary gain 3,647.61
 L-T Gain 7,778.27
 11,425.89
 State 3,500.22
 Total estimated tax 14,926.11

EXHIBIT 6

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COPY

PROMISSORY NOTE

NATIONAL VESSEL DOCUMENTATION OF
 USCG
 RECEIVED / FILED

20 APR '04

10:08

RECORDED: BOOK _____ PAGE _____
 DOCUMENTATION OFFICER

For the value received, BARRY COHEN and CHRIS COHEN, an individual of 2028 Draydon Avenue, Cambria, California 93428, hereinafter referred to as maker, promises to pay to the order of DEL MAR SEAFOODS, INC., 331 Ford Street, Watsonville, California 95076, its successors and assigns, hereinafter referred to as holder, the sum of two hundred fifteen thousand (\$215,000.00) dollars at the rate of seven (7) percent per annum, as follows:

Monthly payments of \$3,000.00 or fifteen (15) percent of the gross landing receipts of each and every landing of seafood product made by the fishing vessel POINT LOMA, whichever is greater, commencing on JANUARY '04 and on the 15th day of each succeeding month until principal and interest are fully paid. Payments are to be applied to interest first.

1. This promissory note is secured by a First Preferred Ship Mortgage on the vessel POINT LOMA, Official No. CL 515298, dated 10/31/03.

2. Incorporation of Terms of First Preferred Mortgage.

This note is secured by a continuing security interest in the vessel described in a Preferred Mortgage, dated 10/31/03, executed by maker in favor of holder. The terms of that Preferred Mortgage are incorporated into this note by reference to the same effect as if set forth in this note in their entirety. On default, under Preferred Mortgage or under this note, holder may exercise any of the remedies granted by the Preferred Mortgage. Maker acknowledges that holder rights are cumulative.

3. Acceleration of Maturity.

In the event of default, in the payment of any of the installments or interest due as provided in this

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RICHARD P WAGNER

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note, time being of the essence, holder may, without notice or demand, declare the entire principal sum then unpaid immediately due and payable. Further, if maker should at any time fail in business or become insolvent, or commit an act of bankruptcy, or if any writ of execution, garnishment, attachment, or other legal process is issued against any deposit account or other property of maker, or if any assessment for taxes against maker, other than taxes on real property, is made by the federal or state government, or any department or agency of the federal or state government, or if maker fails to notify holder of any material change in their financial condition, all of the obligations of maker shall, at option of holder, become due and payable immediately without demand or notice.

4. Modification of Terms.

Holder may, with or without notice to maker, cause additional parties to be added to this note, or release any party, or revise, extend, or renew the note, or extend the time for making any installment provided for in this note, or accept any installment in advance, all without affecting the liability of maker.

5. Attorney's Fees.

If suit is commenced on this note, maker shall pay to holder a reasonable attorney's fee and all costs.

6. Waiver of Rights by Maker.

Maker hereby waives (a) presentment, demand, protest, notice of dishonor and/or protest, and notice of non-payment; (b) the right, if any, to the benefit of, or to direct the application of, any security hypothecated to holder until all indebtedness of maker to holder, however arising, shall have been paid; and (c) the right to require holder to proceed against any party to this note, or to pursue any other remedy in holder power. Holder may proceed against maker directly and independently of any other party to this note, and the cessation of the liability of any other party or

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any reason other than full payment, or any revision, renewal, extension, forbearance, change of rate of interest, or acceptance, release, or substitution of security, or any impairment or suspension of holder's remedies or rights against any other party, shall not in any way affect the liability of maker.

DATED: 10/31/07


Barry Cohen


Chris Cohen

EXHIBIT 7

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COPY

FIRST PREFERRED MORTGAGE

NATIONAL VESSEL DOCUMENTATION CENTER
RESERVED / FILED

Official No: 515-298

20 APR '04

10:08 AM

On the vessel:
POINT LOMA

RECORDED: BOOK 04:70 PAGE 497
ASSURANCE OFFICE

Dated: 10/31/03

Amount of Mortgage \$215,000.000

and made by HARRY COHEN And CHRIS COHEN a married couple

(Hereinafter called "Owner")

WITNESSETH

Whereas, the maker, Mortgagor herein, is the sole owner of the whole of the vessel (if more than one vessel is mortgaged hereunder, the term vessel means each such vessel) hereinafter named and described, and is justly indebted to the Mortgagee, as evidenced by the promissory note dated 10/31/03 in the principal amount of \$215,000.00, payable to the order of Mortgagee as follows:

Per the Attached Promissory Note which shall become a part of this mortgage.

THE TOTAL AMOUNT OF THIS MORTGAGE IS TWO HUNDRED FIFTEEN THOUSAND DOLLARS AND PERFORMANCE OF MORTGAGE COVENANTS.

And has agreed to give this Mortgage as security, and has authorized and directed the execution and delivery hereof.

NOW, THEREFORE, in consideration of the premises and for other good and valuable considerations, receipt of all of which is hereby acknowledged and to secure payment of said indebtedness and interest and other sums that hereafter may become due pursuant hereto and the performance of all covenants hereof. Owner by these presents mortgages and conveys unto Mortgagee, its successors and assigns, the whole of the Vessel named below and further described in her (their) last marine document(s) issued and identified as follows:

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Name: POINT LOMA

Home Port: Avila Beach, California

Official Number: 575298

Together, with all masts, bolters, cables, engines, machinery, bowsprits, sails, rigging, boats, anchors, chains, tackle, apparel, furniture, fittings, tools, pumps, equipment and supplies, and fishing and all other appurtenances and accessories and additions, improvements and replacements now or hereafter belonging thereto, whether or not removed there from, all of which shall be deemed to be included in the term "vessel" herein, and said document(s) being deemed included herein by reference;

TO HAVE AND TO HOLD all singular the above described vessel unto Mortgagee, it's successors and assigns, forever;

PROVIDED, HOWEVER, that if Owner, his heirs, executors, administrators or its successors or assigns shall perform and observe all and singular the terms, covenants and agreements herein, then this Mortgage shall cease, otherwise to remain in full force and effect.

Nothing herein shall be deemed or construed to subject the lien hereof any property other than a vessel as the term issued in Title 46, Chapter 313, and Section 31322 of the United States Code. Owner agrees to pay said indebtedness with interest thereon as herein and in said note provided, and to perform and observe the further terms, covenants and agreements herein, and to hold the vessel subject thereto.

ARTICLE I - PARTICULAR COVENANTS OF OWNER

Owner Covenants as follows:

1. Owner is and shall continue to be a citizen of the United States entitled to own and operate said vessel under her marine document, which Owner shall maintain in full force and effect; and all action necessary for the execution, delivery and validity hereof and of the

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good faith affidavit filed herewith and of said note has been taken. If a corporation, Owner is duly organized and is and shall continue in good standing under the laws of the State of NOT APPLICABLE and authorized to do business and in good standing in any other State wherein Owner regularly does business.

2. Owner lawfully owns and possesses the vessel free from all liens and encumbrances whatsoever except as may herein below be specified and shall warrant and defend title to and possession of all and every part thereof for the benefit of Mortgagee against all persons whomsoever. Owner shall not set up against Mortgagee of this mortgage any claim of Owner against Mortgagee and/or assignee under any past or future transaction.
3. Owner shall at his (its) own expense, keep the vessel fully and adequately insured under usual full marine insurance with policy valuation not exceeding the amount insured and, in the aggregate as to all vessels mortgaged herein, in at least the amount of the unpaid principal balance of this Mortgage, and shall maintain insurance to cover protection and indemnity risks, towage liability risks if the vessel performs towage, employees compensation and other risks and liabilities from time to time specified by Mortgagee. All insurance shall be taken out in the name of Owner and shall by its terms be payable to Mortgage for account of Mortgage and Owner as their respective interests may appear, and all policy forms, underwriters and amounts shall be subject to Mortgagee's approval. Owner shall notify, and shall request underwriters to agree reasonably in advance to notify Mortgagee of any cancellation of or material change in any insurance coverage. All policies, binders and cover notes shall be delivered to Mortgagee with evidence satisfactory to it that all premiums and other charges therefore have been fully paid. Owner shall maintain all such insurance unimpaired by any act, breach or warranty or otherwise.
4. Owner shall comply with and not permit the vessel to be operated contrary to any provision of the law, treaties, conventions, rules, regulations or orders of the United States, any State and/or any other jurisdiction wherein operated, and/or of any department or agency thereof,

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nor remove the vessel from the limits of the United States save on voyages with the intent of returning, nor abandon the vessel in any foreign port. Owner shall do everything necessary to, establish and maintain this Mortgage as First Preferred Mortgage on said vessel.

5. Neither the Owner, Agent nor Master of the vessel has or shall have any right, power or authority to create, incur or permit to be placed or imposed on the vessel or any part thereof any lien whatsoever other than to the Mortgagee or for crew's wages or salvage.

6. Owner shall place and keep prominently in the pilot house (if any), chart room or Master's cabin or elsewhere on the vessel as specified by Mortgagee any notice of this Mortgage required by Mortgagee, and shall keep proper copy hereof with the ship's papers and exhibit the same to all persons having business with the vessel, and to Mortgagee on demand.

7. Owner shall pay when due all taxes, assessments, government charges, fines and penalties lawfully imposed and promptly discharge any and all liens whatsoever upon vessel. Owner shall at his (its) own expense at all times maintain the vessel in thorough repair and working order and shall make all proper renewals and replacements.

8. If the vessel shall be libeled, attached, detained, seized or levied upon or taken into custody under process or under color of any authority, Owner shall forthwith notify Mortgagee by telegram, confirmed by letter, and forthwith discharge or release the vessel therefrom and in any event within fifteen (15) days after such attachment, detention, seizure, levy or taking into custody.

9. Owner shall at all times afford Mortgagee complete opportunity to inspect the vessel and cargoes and papers thereof, and to examine Owners related accounts and records; and shall certify quarterly and, if Mortgagee requests, monthly, that all wages and all other claims whatsoever which might have given rise to a lien upon the vessel have been paid.

10. Owner shall not, without prior written consent of Mortgagee, sell or mortgage the vessel or any interest therein nor charter her except to persons and for uses lawful for American vessels and then only provided said insurance be unaffected thereby or adequately replaced; nor,

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if a corporation, to merge or consolidate with any other person, firm or corporation, or dissolve.

11. From time to time Owner shall execute and deliver such other and further instruments and assurance as in the opinion of Mortgagee's counsel may be required to subject to vessel more effectual to the lien hereof and to the payment of said indebtedness and for operation of the vessel as herein provided, and to effectuate sales as provided in paragraph (C) of Section I of Article 11.

ARTICLE II - DEFAULT

1. In any one or more of the following events, herein termed events of default:

(a) Default in the punctual payment of the principal of the note secured hereby or any installment thereof, or in the due and punctual performance of any provision of Sections 3, 4, 5, 6, 8 and 10 or Article I hereof, or attempt to violate Sections 4 or 10 of Article I hereof, or default continuing for fifteen (15) days in performance of any other covenant herein; or

(b) Commission of any act of bankruptcy by Owner or approval by any court of a petition or answer asking for reorganization, arrangement, extension or other relief under any bankruptcy law; or to appointment of a receiver for Owner or any of Owner's property or the taking by any court of any action comparable thereto; or rendition of a final judgment against Owner for the payment of money and failure of Owner to discharge the same within ninety (90) days or stay the execution thereof pending appeal; or Mortgagee's conclusion in good faith at any time that, through actual or prospective impairment of Owner's net current asset position, net worth, asset-liability ratio, or earning, or through prospective violation of any provision of this Mortgage, Mortgagee is in danger of losing said debt, or any part thereof, by delaying collecting thereof until the time above limited for the payment thereof, then, and in every such case, Mortgagee may:

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(a) Declare the principal of said note and all accrued interest thereon to be and they shall then become and be due and payable forthwith, after which they shall bear interest at the rate of 10% per annum;

(b) Recover judgment for, and collect out of any property of Owner, any amount thereby or otherwise due hereunder; and/or collect all earned charter hire and freight monies relating to services performed by the vessel, Owner hereby assigning to Mortgagee such earned charter hire and freight monies then owing; and/or

(c) Retake the vessel without legal process at any time wherever the same may be, and, without being responsible for loss or damage, hold and in Mortgagee's or in Owner's name lease, charter, operate or otherwise use the vessel for such time and on such terms as Mortgagee may deem advisable, being accountable for net profits, if any, and with the right to dock the vessel free of charge at the Owner's premises or elsewhere at Owner's expense; and/or sell the vessel, free from any claim by Owner of any nature whatsoever, in the manner provided by the law; to the extent permitted by law, such sale may be public or private, without notice, without having the vessel present, and/or Mortgagee may become the purchaser.

For such purpose Mortgagee and its agents are hereby irrevocably appointed the true and lawful attorneys of Owner in his (its) name and stead to make all necessary transfers of the vessel thus sold.

2. In the event that the vessel shall be arrested or detained by any officer of any court or by any other authority, Owner hereby authorizes Mortgagee, its officers, representatives and appointees, in the name of the Owner or of Mortgagee, to receive or to take possession thereof, and to defend any action and/or discharge any lien.

ACCELERATION

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3. Each and every power or remedy herein given to Mortgagee shall be cumulative, and in addition to all powers or remedies now or hereafter existing in admiralty, in equity, at law or by statute, and may be exercised as often as may be deemed expedient by Mortgagee. No delay or omission by Mortgagee shall impair any right, power, or remedy, and no waiver of any default shall waive any other default. In any suit Mortgagee shall be entitled to obtain appointment of a receiver of the vessel and the earnings thereof, who shall have full rights and powers to use and operate the vessel, and to obtain a decree ordering and directing the sale and disposition thereof.

4. The net proceeds of any judicial or other sale, and any charter, management, operation or other use of the vessel by Mortgagee, of any claim for damages, of any judgment, and any insurance received by Mortgagee (except to the extent paid to Owner or applied in payment of repairs or otherwise for Owner's benefit) shall be applied as follows:

FIRST: To the payment of all attorneys fees, court costs, and any other expenses, losses, charges, damages incurred or advances made by Mortgagee in the protection of its rights or caused by Owner's default hereunder or under the note secured hereby, with interest on all such amounts at the rate of 10% per annum; and to provide adequate indemnity against any liens for which priority over this Mortgage is claimed;

SECOND: To the payment of all interest, to date of payment, on the note and any or all other sums secured hereby, and as to any balance of such proceeds, to the payment of next of any or all matured installments of principal and then of any or all un-matured installments of principal in the inverse order of this maturity.

Mortgagee shall be entitled to collect any deficiency from Owner. Owner shall be entitled to any surplus, subject to set-off in favor of Mortgagee for any other indebtedness of Owner.

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5. All advances and expenditures which Mortgagee in its discretion may make any repairs, insurance, payment of liens or other claims, defense of suit, or for any other purpose whatsoever related hereto or said note and all damages sustained by Mortgagee because of defaults, shall be repaid by Owner on demand with interest at 10% per annum, and until so paid shall be a debt due from Owner to Mortgagee secured by the lien thereof. Mortgagee shall not be obligated to make any such advances or expenditures, nor shall the making thereof relieve Owner of any obligation or default with respect thereto.

ARTICLE III - POSSESSION UNTIL DEFAULT

Until one or more of the events of default hereinbefore described, Owner shall be permitted to obtain actual possession and use of the vessel.

ARTICLE IV - SUNDRY PROVISIONS

All covenants and agreements of Owner herein contained shall bind Owner, his heirs, executors, administrators and assigns, or its successors and assigns, shall inure to the benefit of Mortgagee and its successors and assigns. Following any assignments hereof, any reference herein of "Mortgagee" shall be deemed to refer to the assignee. If one or more person is the Owner herein, "his" shall mean "their".

FUTURE ADVANCES. This mortgage is executed for the purpose of securing not only the payment of the above described note but also to secure all future advances made by the holder of said note to the mortgagor; and said mortgage shall remain in full force and effect to secure all future advances and all renewals or extensions of the above described note.

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IN WITNESS WHEREOF, on the day and year above written, Owner has executed this Mortgage, or if a corporation, has caused this Mortgage to be executed in its name and its corporate seal to be affixed hereto by its proper officers thereunto duly authorized or as required by State law.

Benny A. Cohen
Richard P. Cohen

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RICHARD P WAGNER

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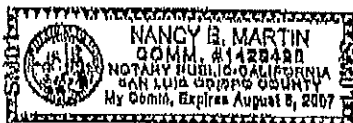
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Luis Obispo

On 10-31-03 before me, Nancy E. Martin, Notary Public, personally appeared Christene Layne Cohen and Barry A. Cohen,

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Nancy E. Martin
Signature of Notary

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ Individual
☐ Corporate Officer

Title

- ☐ Partner(s) ☐ Limited
☐ General
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

DESCRIPTION OF ATTACHED DOCUMENT

First Preferred Mortgage

Title or Type of Document

11 plus attached acknowledgment

Number of Pages

10-31-03

Date of Document

None

Absent Signer (Principal) is Representing:

Signer(s) Other Than Name(s) Above

EXHIBIT 8

James P. Walsh, CSB. No. 184620
 Gwen Fanger, CSB No. 191161
 DAVIS WRIGHT TREMAINE LLP
 505 Montgomery Street, Suite 800
 San Francisco, California 94111-3611
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 budwalsh@dwt.com

Attorneys for Defendants and Claimant
 BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and
 Claimant, F/V POINT LOMA Fishing Company, Inc.

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,

Plaintiff,

v.

BARRY COHEN, CHRIS COHEN (aka
 CHRISTENE COHEN), *in personam* and,
 F/V POINT LOMA, Official Number
 515298, a 1968 steel-hulled, 126-gross ton,
 70.8 foot long fishing vessel, her engines,
 tackle, furniture apparel, etc., *in rem*, and
 Does 1-10,

Defendants.

No. C-07-2952-WHA

**DEFENDANTS BARRY COHEN,
 CHRIS COHEN'S (aka CHRISTENE
 COHEN) RESPONSE TO
 PLAINTIFF'S FIRST SET OF
 REQUESTS FOR ADMISSIONS**

PROPOUNDING PARTY: PLAINTIFF DEL MAR SEAFOODS, INC.

RESPONDING PARTY: DEFENDANTS BARRY and CHRISTINE COHEN

SET NO.: ONE

Defendants and Responding Parties, BARRY and CHRISTENE COHEN ("Responding Parties"), respond and object to Plaintiff's First Set of Requests for Admissions as follows.

PRELIMINARY STATEMENT

These responses are made solely for the purposes of this action and are subject to all objections as to competence, relevance, materiality, propriety, and admissibility and any other objections or grounds that would require the exclusion of any statement made herein if such

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1 statement were made by a witness present and testifying in Court, all of which objections and
2 grounds are reserved and may be interposed at the time of trial.

3 No incidental or implied admissions are intended by these responses. The fact that
4 Responding Parties respond or object to any of the request for admissions should not be taken as
5 an admission that Responding Parties accept or admit the existence of any facts assumed by such
6 request for admissions, or that such response or objection constitutes admissible evidence as to
7 any such assumed facts. The fact that Responding Parties respond to part or all of any request for
8 admission is not intended to and shall not be construed to be a waiver by Responding Parties of
9 any objection to any request for admission. Furthermore, Responding Parties' responses herein
10 are made without waiving, and expressly reserving, the right: (a) to object to any effort to use any
11 responses in any step or proceeding in this action or any other action, and (b) to object on any
12 ground to other discovery requests regarding the subject matter of any request herein.

13 This action is still in the discovery phase and Responding Parties have not yet completed
14 investigation of the facts related to the action; have not yet completed discovery in this action; and
15 have not yet completed preparation for trial. Responding Parties' responses herein are based on,
16 and reflect the current state of their knowledge. Responding Parties expressly reserve the right to
17 supplement these responses at a later time should they deem such supplementation necessary or
18 appropriate, but assume no obligation to do so.

19 **RESPONSE TO REQUESTS FOR ADMISSIONS**

20 **REQUEST FOR ADMISSION NO. 1:**

21 Admit that you are acting in this case as the agent for the interests of your marital
22 community.

23 **RESPONSE TO REQUEST NO 1:**

24 Responding Parties object to the term "you" as vague and ambiguous as to which
25 responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also
26 object to the terms "acting" and "agent" as vague and ambiguous. Without waiving these
27
28

1 objections, admit that Barry and Christene Cohen are each the agent of each other in their marital
2 community.

3 **REQUEST FOR ADMISSION NO. 2:**

4 Admit that in 2004 you transferred the ownership of the F/V POINT LOMA (the "Vessel")
5 to the F/V Point Loma Fishing Company, Inc.

6 **RESPONSE TO REQUEST NO 2:**

7 Responding Parties object to the use of the term "you" as vague and ambiguous as to
8 which responding party, Barry or Christene Cohen, the request is directed at. Without waiving
9 this objection, admit that Barry and Christene Cohen jointly transferred the ownership of the F/V
10 Point Loma to the F/V Point Loma Fishing Company, Inc.

11 **REQUEST FOR ADMISSION NO. 3:**

12 Admit that you are the manager of the F/V Point Loma Fishing Company, Inc.

13 **RESPONSE TO REQUEST NO 3:**

14 Responding Parties object to the use of the term "you" as vague and ambiguous as to
15 which responding party, Barry or Christene Cohen, the request is directed at. Without waiving
16 this objection, admit that Barry Cohen is the manager of the F/V Point Loma Fishing Company,
17 Inc.

18 **REQUEST FOR ADMISSION NO. 4:**

19 Admit that you and your wife each own 50% of the shares of the F/V Point Loma Fishing
20 Company, Inc.

21 **RESPONSE TO REQUEST NO 4:**

22 Responding Parties object to the use of the term "you" and "your" as vague and ambiguous
23 as to which responding party, Barry or Christene Cohen, the request is directed at. Without
24 waiving this objection, admit that Barry and Christene Cohen each own 50% of the shares of the
25 F/V Point Loma Fishing Company, Inc.

REQUEST FOR ADMISSION NO. 5:

Admit that in this case you are acting as the agent for the owner of the Vessel, the F/V Point Loma Fishing Company, Inc.

RESPONSE TO REQUEST NO 5:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the term "agent" as vague and ambiguous. Without waiving these objections, admit that Barry Cohen is acting as the agent to the extent he is acting as manager of the F/V Point Fishing Company, Inc.

REQUEST FOR ADMISSION NO. 6:

Admit that you have never used the Vessel to fish anywhere other than in the Exclusive Economic Zone off of California.

RESPONSE TO REQUEST NO 6:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the term "fish" as vague and ambiguous to the extent Responding Parties make a distinction between "fishing" (catching fish) and "shrimping" (catching shrimp) activities. Without waiving these objections, admit that Barry Cohen has never used the Vessel to fish anywhere other than in the Exclusive Economic Zone off of California although he used the Vessel only one time off the coast of Oregon approximately 8-10 years ago for shrimping activities and not for fishing.

REQUEST FOR ADMISSION NO. 7:

Admit that at the end of 2005, in a meeting with both Joe Cappuccio and Joe Roggio, they told you that Del Mar's bank that provided credit to Del Mar, had expressed its concern to Del Mar about the size of Del Mar's loan to you for the Vessel.

RESPONSE TO REQUEST NO 7:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this

objection and without waiving it, deny that there was such a meeting with both Joe Cappuccio and Joe Roggio to the extent Barry Cohen can not recollect for certainty that Joe Roggio was also at the meeting.

REQUEST FOR ADMISSION NO. 8:

Admit that at the meeting with Joe Roggio and Joe Cappuccio at the end of 2005 Joe Cappuccio asked you to make a large payment on the loan evidenced by the Note and Mortgage.

RESPONSE TO REQUEST NO 8:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Without waiving this objection, Barry Cohen responds that he can not recollect with certainty that both Joe Roggio and Joe Cappuccio were at the meeting; but admit that at a meeting with at least Joe Cappuccio at the end of 2005, Joe Cappuccio asked Barry Cohen to make a large payment on the loan evidenced by the Note and Mortgage.

REQUEST FOR ADMISSION NO. 9:

Admit that you agreed with Del Mar that you would be responsible for the debts of your sons, Michael and Leonard, to Del Mar arising from amounts they owed the Avila Beach joint venture.

RESPONSE TO REQUEST NO 9:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen denies this request.

REQUEST FOR ADMISSION NO. 10:

Admit that when you made the \$175,000 payment to Del Mar, you told Joe Cappuccio you would pay Del Mar the remaining balance owed to Del Mar.

RESPONSE TO REQUEST NO 10:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Without waiving

1 this objection, admit that when Barry Cohen gave the check for \$175,000 to Joe Cappuccio, Joe
 2 Cappuccio said "thank you" and that when Barry Cohen said that he would pay the balance of the
 3 Note as soon as he could, Joe Cappuccio said that "it is such a small amount, I'm not even worried
 4 about it."

5
 6 **REQUEST FOR ADMISSION NO. 11:**

7 Admit that you asked Del Mar to inform you of the amounts of your sons, Michael and
 8 Leonard's, debts to the Avila Beach joint venture in November, 2005.

9 **RESPONSE TO REQUEST NO 11:**

10 Responding Parties object to the use of the term "you" as vague and ambiguous as to
 11 which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this
 12 objection and without waiving it, Barry Cohen denies he asked Del Mar to inform him of the
 13 amounts his sons, Michael and Leonard's, debts to the Avila Beach joint venture in November,
 14 2005.

15 **REQUEST FOR ADMISSION NO. 12:**

16 Admit that the reason you requested the amount of your son's debts to Del Mar was so that
 17 you would know how much debt you were assuming on their behalf and how much you would be
 18 entitled to be reimbursed by them.

19 **RESPONSE TO REQUEST NO 12:**

20 Responding Parties object to the use of the term "you" as vague and ambiguous as to
 21 which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties
 22 also object to the use of the phrase "requested the amount" as vague and ambiguous.
 23 Notwithstanding these objections and without waiving them, Barry Cohen denies this request.

24 **REQUEST FOR ADMISSION NO. 13:**

25 Admit that Joe Roggio provided you with a spreadsheet (DMSI 0001) detailing the debts
 26 and payments regarding your and your son's debts to Del Mar in November 2005 in response to
 27 your request for such information.
 28

RESPONSE TO REQUEST NO 13:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen denies that Joe Roggio gave him the spreadsheet labeled DMSI 0001 and therefore denies the remainder of this request in full. Barry Cohen admits that in or around November 2005, Joe Roggio gave him a spreadsheet titled Schedule of Payments, attached as Exhibit F to Declaration of Barry Cohen in Support of Responding Parties' Motion to Vacate Order of Arrest, dated July 9, 2007, which is different than DMSI 0001.

REQUEST FOR ADMISSION NO. 14:

Admit that after receiving the spreadsheet (DMSI 0001) you never told Joe Roggio or Joe Cappuccio that you disagreed with any of the amounts noted thereon.

RESPONSE TO REQUEST NO 14:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen denies that he ever received the spreadsheet labeled DMSI 0001 from Joe Roggio and therefore denies the remainder of the request in full. Barry Cohen admits that in or around November 2005, Joe Roggio gave him a different spreadsheet titled Schedule of Payments, attached as Exhibit F to Declaration of Barry Cohen in Support of Responding Parties' Motion to Vacate Order of Arrest, dated July 9, 2007, and after looking at the spreadsheet, Barry Cohen told Joe Roggio that the information in the spreadsheet "didn't look right to me."

REQUEST FOR ADMISSION NO. 15:

Admit that after receiving the spreadsheet (DMSI 0001) you never told Joe Roggio or Joe Cappuccio that you disagreed with how your payments had been applied as evidenced thereon.

RESPONSE TO REQUEST NO 15:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen denies that he ever received the spreadsheet labeled

1 DMSI 0001 from Joe Roggio and therefore denies the remainder of the request in full. Barry
 2 Cohen admits that in or around November 2005, Joe Roggio gave him a different spreadsheet
 3 titled Schedule of Payments, attached as Exhibit F to Declaration of Barry Cohen in Support of
 4 Responding Parties' Motion to Vacate Order of Arrest, dated July 9, 2007, and after looking at the
 5 spreadsheet, Barry Cohen told Joe Roggio that the information in the spreadsheet "didn't look
 6 right to me."

7 **REQUEST FOR ADMISSION NO. 16:**

8 Admit that after receiving the spreadsheet (DMSI 0001) you never told Joe Roggio or Joe
 9 Cappuccio that you disagreed with treating the debts listed thereon under "Michael Cohen," "Olde
 10 Port Inn," "Inventory," and "Point Loma" as advances under the Note and Mortgage.

11 **RESPONSE TO REQUEST NO 16:**

12 Responding Parties object to the use of the term "you" as vague and ambiguous as to
 13 which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this
 14 objection and without waiving it, Barry Cohen denies that he ever received the spreadsheet labeled
 15 DMSI 0001 and therefore denies the remainder of the request in full.

16 **REQUEST FOR ADMISSION NO. 17:**

17 Admit that after receiving the newer revised spreadsheet from Joe Roggio in approximately
 18 December 2006, as you have stated in your Declaration dated July 9, 2007 on pg. 3, lines 2-4, you
 19 never told Joe Roggio or Joe Cappuccio that you disagreed with treating the debts listed thereon
 20 under "Olde Port Balance," "Point Loma Balance," and "Fees for Olde Port Case" as advances
 21 under the Note and Mortgage.

22 **RESPONSE TO REQUEST NO 17:**

23 Responding Parties object to the use of the term "you" as vague and ambiguous as to
 24 which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties
 25 also object to this request to the extent the statement in Barry Cohen's Declaration referred to in
 26 this request appears at page 5 of the Declaration and not page 3. Notwithstanding these objections
 27 and without waiving them, Barry Cohen denies this request.
 28

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REQUEST FOR ADMISSION NO. 18:

Admit that on or about January 30, 2007 that you authored the document DMSI 0078.

RESPONSE TO REQUEST NO 18:

Responding Parties object to the use of the term “you” as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen responds that after a diligent search of his records he has no recollection of whether he authored the document DMSI 0078 and therefore denies this request.

REQUEST FOR ADMISSION NO. 19:

Admit that in approximately January 2007 Joe Roggio asked you to make payments on the amounts you owed Del Mar.

RESPONSE TO REQUEST NO 19:

Responding Parties object to the use of the term “you” as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the phrase “the amounts you owe Del Mar” as vague and ambiguous as to what specific amounts are being referred to. Without waiving this objection, Barry Cohen admits that Joe Roggio asked him to make payments but Joe Roggio did not say what the payments would be for or state the amount that the payments should be.

REQUEST FOR ADMISSION NO. 20:

Admit that Del Mar has a valid maritime lien on the Vessel.

RESPONSE TO REQUEST NO 20:

Responding Parties object to this request on the grounds that it calls for a legal conclusion as to what constitutes a valid maritime lien. Without waiving this objection, admit that if Del Mar has a valid Preferred Ship Mortgage, then it has a security interest in the Vessel in the form of a maritime lien.

REQUEST FOR ADMISSION NO. 21:

Admit that under the terms of the Mortgage that you signed (DMSI 0101 – DMSI 0110) Del Mar is not, and was not, required to give you notice before foreclosing on the Mortgage.

RESPONSE TO REQUEST NO 21:

Responding Parties object to this request on the grounds that it calls for a legal conclusion as to the notice requirements under the terms of the Mortgage. Responding Parties also object that the use of the phrase "terms of the Mortgage" is vague and ambiguous as the "terms" of the Mortgage also include covenants of good faith and fair dealing, which in light of the extensive prior dealings among the parties and the lump-sum payment by the Cohens at the request of Plaintiff, required at minimum, an inquiry into the ability of the Cohens to make payments on the Note and notice prior to foreclosure. Notwithstanding these objections and without waiving them, deny.

REQUEST FOR ADMISSION NO. 22:

Admit that under the terms of the Mortgage that you signed (DMSI 0101 – DMSI 0110) there is no provision relieving you, the mortgagor, from your obligation to continue to make monthly payments even if you make a large payment in excess of your monthly obligation under the Note and Mortgage.

RESPONSE TO REQUEST NO 22:

Responding Parties object to this request on the grounds that it calls for a legal conclusion as to the mortgagor's obligations under the terms of the Mortgage. Notwithstanding this objection and without waiving it, deny.

REQUEST FOR ADMISSION NO. 23:

Admit that under the terms of the Note and Mortgage you, the mortgagor, were, and are, required to make monthly payments of \$3,000 or 15% of the Vessel's monthly gross landing receipts starting on January 1, 2004 and continuing until paid in full.

RESPONSE TO REQUEST NO 23:

Responding parties deny this request. The parties amended the Note and payment obligations by their mutual performance in two ways: 1) the Cohens' lump-sum payment in the amount of \$175,000, that was not required under the terms of the Note, includes advance payments under the Note making them current to-date, and 2) Del Mar has never demanded interest on the Note at any time nor have the Cohens paid any interest on the Note.

REQUEST FOR ADMISSION NO. 24:

Admit that from January 1, 2004 until December 22, 2004 you failed to make a single payment to Del Mar towards your obligations under the Note and Mortgage.

RESPONSE TO REQUEST NO 24:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Without waiving this objection, Barry Cohen admits this request.

REQUEST FOR ADMISSION NO. 25:

Admit that after your \$5,000 payment dated December 22, 2004 you did not make another payment until November 9, 2005.

RESPONSE TO REQUEST NO 25:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the term "payment" as to what type of payments this request is referring. Without waiving these objections, Barry Cohen admits that he did not make another payment by check until November 9, 2005, when the Cohens made a lump sum payment on the Note in the amount of \$175,000, although plaintiff's spreadsheet labeled DMSI 0001 shows other "payments" credited against the amount Barry Cohen allegedly owes them during the time period from December 22, 2004 to November 9, 2005.

REQUEST FOR ADMISSION NO. 26:

Admit that your last payment to Del Mar was on April 23, 2007.

RESPONSE TO REQUEST NO 26:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties also object to the use of the term "payment" as to what type of payments this request is referring. Without waiving these objections, Barry Cohen admits that his last direct payment by check was April 23, 2007, although by virtue of his lump sum advance payment in the amount of \$175,000,

1 he continues to make payments and is current under the Note and Mortgage through at least
2 February 2009.

3 **REQUEST FOR ADMISSION NO. 27:**

4 If your response to the previous Request was to admit it, also admit that after your last
5 payment on April 23, 2007 there was an outstanding balance due under the Note and Mortgage.

6 **RESPONSE TO REQUEST NO 27:**

7 Responding Parties object to the use of the term "you" as vague and ambiguous as to
8 which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties
9 also object to the use of the term "payment" as to what type of payments this request is referring.
10 Without waiving these objections, Barry Cohen admits that there is an outstanding balance
11 remaining under the Note and Mortgage in the amount of \$27,000 although no payments are
12 currently due until at least February 2009.

13 **REQUEST FOR ADMISSION NO. 28:**

14 If your response to Request No. 26 was anything other than an unqualified "admit," admit
15 that you currently owe money to Del Mar under the Note and Mortgage.

16 **RESPONSE TO REQUEST NO 28:**

17 Responding Parties object to the use of the term "you" as vague and ambiguous as to
18 which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties
19 also object to the use of the term "payment" as to what type of payments this request is referring.
20 Without waiving these objections, Barry Cohen admits that there is an outstanding balance
21 remaining under the Note and Mortgage in the amount of \$27,000 although no payments are
22 currently due until at least February 2009.

23 **REQUEST FOR ADMISSION NO. 29:**

24 Admit that the Vessel is your only source of income, other than Social Security.

25 **RESPONSE TO REQUEST NO 29:**

26 Responding Parties object to the use of the term "your" as vague and ambiguous as to
27 which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties
28

1 also object as to the use of the phrase "source of income" as vague and ambiguous. Without
2 waiving these objections, Barry Cohen admits that the Vessel is his only source of income, other
3 than Social Security.
4

5 **REQUEST FOR ADMISSION NO. 30:**

6 Admit that you wrote checks made out to yourself as payee on Del Mar's Wells Fargo
7 account no. 4435703640.

8 **RESPONSE TO REQUEST NO 30:**

9 Responding Parties object to the use of the terms "you" and "yourself" as vague and
10 ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at.
11 Notwithstanding this objection and without waiving it, Barry Cohen cannot admit or deny this
12 request because he lacks sufficient information to identify the account number of one of plaintiff's
13 own checking accounts.

14 **REQUEST FOR ADMISSION NO. 31:**

15 If your response to the previous Request was to admit it, admit also that the checks your
16 wrote on that account made payable to yourself as payee were not authorized by Del Mar.

17 **RESPONSE TO REQUEST NO 31:**

18 Responding Parties object to the use of the term "your" as vague and ambiguous as to
19 which responding party, Barry or Christene Cohen, the request is directed at. Responding Parties
20 also object to the use of the term "authorized" as vague and ambiguous. Notwithstanding these
21 objections and without waiving them, Barry Cohen denies this request. Barry Cohen admits that,
22 as manager and equal partner of the Avila Beach Joint Venture, he had the authority to write
23 checks on behalf of the Avila Beach Joint Venture.

24 **REQUEST FOR ADMISSION NO. 32:**

25 Admit that you spent some of the money you obtained from Del Mar's Wells Fargo
26 account no. 4435703640 on items that were not related to the Olde Port Fisheries joint venture.
27
28

RESPONSE TO REQUEST NO 32:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen cannot admit or deny this request because he lacks sufficient information to identify the account number of one of plaintiff's own checking accounts. Barry Cohen further denies that there was a joint venture involving Old Port Fisheries.

REQUEST FOR ADMISSION NO. 33:

Admit that you agreed to pay Del Mar for its attorneys fees it incurred in the Avila Beach litigation you instituted against the Port of Avila Beach.

RESPONSE TO REQUEST NO 33:

Responding Parties object to the use of the term "you" as vague and ambiguous as to which responding party, Barry or Christene Cohen, the request is directed at. Notwithstanding this objection and without waiving it, Barry Cohen admits that in a meeting with Joe Roggio, he tentatively and orally agreed to pay the legal fees; however, he received no consideration, felt pressure to make such an agreement as he was an employee of Del Mar at the time, never received an accounting as to the amount of the fees, and never agreed, orally or otherwise, to add these fees to the Note.

DATED this 21st day of December, 2007.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By 

James P. Walsh

Gwen Fanger

Attorneys for DEFENDANTS and
CLAIMANT BARRY COHEN, CHRIS
COHEN (aka CHRISTENE COHEN), the F/V
POINT LOMA and Claimant, F/V POINT
LOMA FISHING COMPANY, INC.

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111.

I caused to be served the foregoing **DEFENDANTS BARRY COHEN, CHRIS COHEN'S (aka CHRISTENE COHEN) RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS** on the parties indicated below by the following means:

I enclosed a true and correct copy of said document in an envelope and placed it for collection and mailing with the United States Post Office on December 21, 2007, following the ordinary business practice to the following:

Gregory W. Poulos
Max L. Kelley
Cox, Wootton, Griffin,
Hansen & Poulos LLP
190 The Embarcadero
San Francisco, CA 94105

Richard P. Wagner
The Law Offices of Richard P. Wagner
400 Ocean Gate, Suite 700
Long Beach, CA 90802

I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business.

Executed on December 21, 2007, at San Francisco, California.

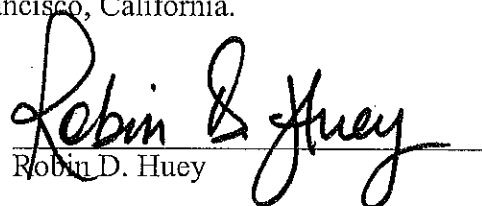

Robin D. Huey

EXHIBIT 9

02/16/07 05:01:52p


Case 3:07-cv-02952-WHA Document 32-2 Filed 07/09/2007 Page 15 of 16

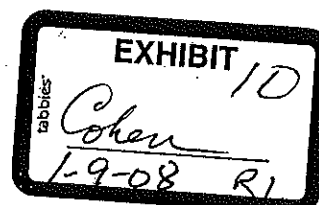
Web Client: NetImage Coast National Bank


Find	Account Number	102509277	Tracer Number	R:1 B:4 S:330
Clear	Amount	2,000.00		
Print	Posting Date	02/12/2007		
Log Off	Check Number	4008		
	TranCode	4008		
	Routing Number			

View Query Results View Front View Back View Front AND Back

F/V POINT LOMA PO BOX 40 AVILA BEACH CA 93424		4008
DATE: 1/30/07		90-4252/1222
PAY TO THE ORDER OF: DEL MAR SEAFOODS		\$ 2,000.00
Two Thousand & 00/100		00/100 DOLLARS
1199 Grand Avenue Arroyo Grande, CA 93420 888-746-2530		SECURITY MARKING DOLLARS on back
MEMO: on Account		Ben A. Cohen
⑆122242526⑆4008 102 509277⑆		⑈0000200000⑈

<p>ENDORSE HERE</p> <p>PAY TO THE ORDER OF WELLS FARGO BANK, N.A. FOR DEPOSIT ONLY DEL MAR SEAFOODS, INC. 4427067053</p> <p>DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE RESERVED FOR FINANCIAL INSTITUTION USE</p> <p>WFB NA FREEM 022832007 3720 04010287695 3412: 14 ESU 52</p>	<p>  The security features listed below are not listed, altered, imitated, or reproduced on this document. Microprint: The words "FEDERAL RESERVE NOTE" are printed in a continuous, wavy line around the perimeter of the note. Color: The words "FEDERAL RESERVE NOTE" are printed in a continuous, wavy line around the perimeter of the note. Watermark: The words "FEDERAL RESERVE NOTE" are printed in a continuous, wavy line around the perimeter of the note. Security Marking: The words "FEDERAL RESERVE NOTE" are printed in a continuous, wavy line around the perimeter of the note. Serial Number: 1222425264008 Check Number: 4008 MICR Line: ⑆122242526⑆4008 102 509277⑆ </p>
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<https://itemresearch.intercept.net/ItemViewer.ASP?WCI=WIUpdateItem&WCU=BankID...> 6/21/2007



A screenshot of a 'Find' menu from a text editor. The menu is open, showing options: 'Find', 'Clear', 'Print', and 'Log Off'. The 'Find' option is highlighted with a mouse cursor.

[View Query Results](#) [View Front](#) [View Back](#) [View Front AND Back](#)

[illegible]

Find
Clear
Port
Log Off

Account Number	102509277	Tracer Number	R:1 B:5 S:1290
Amount	3,000.00		
Posting Date	04/27/2007		
Check Number	4063		
TranCode	4063		
Routing Number			


F/V POINT LOMA
 PO BOX 40
 AVILA BEACH CA 93424

4063
 90-4252/1232

DATE 4/23/07

PAY TO THE ORDER OF DEL MAR SEAFOODS \$ 3,000⁰⁰/₁₀₀

Three Thousand & 00/100 DOLLARS


 1199 Grand Avenue
 Arroyo Grande, CA 93420
 888-746-2530

MEMO PAID ON ACCOUNT Randy A. Cohen

⑆122242526⑆4063 102 509274⑆ ⑈0000300000⑈

[illegible]

EXHIBIT 10

Joe,

Please credit my account. With this payment, if your analysis was correct, the new balance should be \$139,749.79.

I will try to send you at least \$2,000/month, sometimes \$3,000.

I'm sick right now and if I try to talk I start coughing, so instead, you get this note.

I'm still unemployed, but this gives me a chance to help Michael make Olde Port better.

I hope things are going good for you and your family. Please give Yvonne my regards. Too bad our families never got the chance to become better friends. Oh, well, things usually happen for a reason. Well, take care of yourself.

Barry

Tuesday, January 30, 2007 America Online: FishmanCohen

DMSI 0078

EXHIBIT 11

GWP

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

---oOo---

Condensed Transcript

JG	Jane GROSSMAN
RS	REPORTING Services

DEL MAR SEAFOODS, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 BARRY COHEN, CHRIS COHEN)
 (aka CHRISTENE COHEN), in)
 personam, and F/V POINT LOMA,)
 Official Number 515298, a)
 1968 steel-hulled, 126-gross)
 ton, 70.8 foot long fishing)
 vessel, her engines, tackle,)
 furniture apparel, etc., in)
 rem, and Does 1-10,)
)
 Defendants.)

No. C-07-2952-WHA

DEPOSITION OF JOSEPH FRANK CAPPUCCIO

December 14, 2007

Taken before JANE GROSSMAN

CSR No. 5225

JANE GROSSMAN REPORTING SERVICES
 Certified Shorthand Reporters
 1939 Harrison Street, Suite 460
 Oakland, California 94612
 (510) 444-4500

<p>1 it's \$215,000?</p> <p>2 A. That's Joe Roggio's job. He'll know exactly</p> <p>3 to the penny what the mortgage would be.</p> <p>4 Q. I see. Do you know if Del Mar Seafoods had</p> <p>5 any other written promissory note with Mr. Cohen other</p> <p>6 than the one that we've just discussed?</p> <p>7 A. That would be Joe Roggio's job.</p> <p>8 Q. Did there come a time in 2005 that you met</p> <p>9 with Mr. Cohen to talk about concerns that had been</p> <p>10 raised with this note by your bank?</p> <p>11 A. I don't remember.</p> <p>12 Q. So, you don't remember that you met with</p> <p>13 Mr. Cohen and said, "The bank is concerned about the</p> <p>14 size of the note, and I need some -- I need some help"?</p> <p>15 A. I don't have any specific recollection.</p> <p>16 Q. Do you recall in 2005 that there was an audit</p> <p>17 of your company that raised a question about the size of</p> <p>18 this note?</p> <p>19 A. The bank audits loans of our size annually.</p> <p>20 It's standard procedure.</p> <p>21 Q. But do you recall the audit in 2005?</p> <p>22 A. The bank audits every company of a company our</p> <p>23 size annually.</p> <p>24 But I don't remember or have any detailed</p> <p>25 knowledge of the 2005 audit, no. I only assume there</p>	<p>1 A. I don't remember.</p> <p>2 Q. You don't remember what month?</p> <p>3 A. No.</p> <p>4 Q. You don't remember what year?</p> <p>5 A. No.</p> <p>6 Q. Did you accept the \$175,000 check?</p> <p>7 A. I was surprised he gave it to me. I kept</p> <p>8 telling him, "Why are you giving it to me? Give it to</p> <p>9 Joe Roggio."</p> <p>10 Q. Did you have -- did you have any conversation</p> <p>11 with Mr. Cohen after he handed you the check?</p> <p>12 A. I don't really remember.</p> <p>13 Q. Let's go back to the time just before you</p> <p>14 asked lawyers to arrest the vessel, which would be</p> <p>15 April/May of this year.</p> <p>16 A. Okay.</p> <p>17 Q. Okay. Did you have a conversation with</p> <p>18 Joe Cappuccio -- I mean with Joe Roggio about</p> <p>19 Barry Cohen and his loan?</p> <p>20 A. Yes.</p> <p>21 Q. When was this conversation?</p> <p>22 A. I don't remember.</p> <p>23 Q. What did you discuss in that conversation?</p> <p>24 A. I don't remember.</p> <p>25 Q. Well, didn't you discuss that you wanted to</p>
<p>1 was one.</p> <p>2 Q. So, you didn't -- you never did talk to a bank</p> <p>3 at any time?</p> <p>4 A. That would have been Joe Roggio's department.</p> <p>5 Q. So, you didn't discuss the note with the bank</p> <p>6 at all?</p> <p>7 A. That's Joe Roggio's job.</p> <p>8 Q. That's Joe Roggio's job. Okay.</p> <p>9 In this case, with respect to the note, do you</p> <p>10 recall any of the terms of the note?</p> <p>11 A. No.</p> <p>12 Q. You don't recall if Mr. Cohen had to make</p> <p>13 payments of \$3,000 a month, for example?</p> <p>14 A. Joe Roggio would have worked that out with</p> <p>15 Mr. Cohen.</p> <p>16 Q. I see. Do you recall a time when</p> <p>17 Mr. Barry Cohen came into your office and handed you a</p> <p>18 check for \$175,000?</p> <p>19 A. Yes, I remember that actually.</p> <p>20 Q. Do you recall the date?</p> <p>21 A. No. I told him, "That's great. Thank you.</p> <p>22 Go give it to Joe Roggio."</p> <p>23 Q. Was it in your office?</p> <p>24 A. Yes, it was.</p> <p>25 Q. Was it in the morning or in the afternoon?</p>	<p>1 consider a way to possibly arrest the vessel?</p> <p>2 A. No.</p> <p>3 Q. Do you remember whether you discussed</p> <p>4 Mr. Cohen's divorce at that time with Mr. Roggio?</p> <p>5 A. We discussed the security of the asset or the</p> <p>6 money because his situation looked bad.</p> <p>7 Q. Now, you said you discussed "the asset."</p> <p>8 What asset would that be?</p> <p>9 A. We wanted to make sure that our interest was</p> <p>10 protected. Our asset was the fishing boat. We wanted</p> <p>11 to make sure it was secure from possible financial</p> <p>12 situations that could have got us -- to put Del Mar</p> <p>13 Seafoods in a position that it would lose its security</p> <p>14 of the loan.</p> <p>15 Q. So, it's your testimony here today that you</p> <p>16 and Mr. Roggio talked in detail about the vessel and its</p> <p>17 security?</p> <p>18 A. Not in detail. We just wanted to make sure</p> <p>19 that the assets were protected, that our security was</p> <p>20 enhanced with Barry's position.</p> <p>21 Q. "Enhanced," did you say?</p> <p>22 A. We wanted to make sure that the -- that our</p> <p>23 collectibility of the debt was in a more safe and secure</p> <p>24 position.</p> <p>25 And I told him to do that.</p>

1 Q. So, in order to make sure, what did you tell
2 Mr. Roggio to do?
3 A. Talk to our attorney.
4 Q. Did you have any discussion about whether
5 Mr. Roggio would investigate whether the vessel was, in
6 fact, working at that time?
7 A. Whether the boat was fishing?
8 Q. Right.
9 A. Yes, it was fishing.
10 Q. Did you talk about it with Mr. Roggio?
11 A. I don't remember.
12 Q. Did you suggest to Mr. Roggio that he ought to
13 call Barry on the phone and find out what's going on?
14 A. I don't remember.
15 Q. Did you suggest to Mr. Roggio that he ought to
16 write a letter to Barry and to Chris Cohen and say,
17 "What's your status? Can you pay the loan?"
18 A. I don't remember.
19 Q. Did you discuss with Mr. Roggio the amount of
20 money that Barry might be owing?
21 A. I don't specifically remember.
22 Q. Do you recall if you asked Mr. Roggio to check
23 the Coast Guard records to see who owned the boat?
24 A. I don't remember.
25 Q. I'm going to show you what is -- we're not

23

1 going to mark this as an exhibit -- a bill of sale.
2 What I'll tell you, Mr. Cappuccio, is that is
3 a bill of sale that sells a vessel to a corporation.
4 MR. POULOS: Do you have a copy for me?
5 MR. WALSH: I think I gave one to you
6 yesterday.
7 MR. POULOS: You also said we weren't going to
8 use the same exhibits.
9 Fortunately, I think I brought my copies.
10 MR. WALSH: Good. Good job.
11 Q. My question is, Do you recall a time talking
12 to Mr. Cohen about -- where he asked you a question
13 about possibly putting his vessel into a corporation?
14 A. I don't specifically remember.
15 MR. POULOS: Do you want to wait a minute,
16 Counsel, while I locate the document?
17 MR. WALSH: That's all I've got.
18 THE WITNESS: Keep that one (tendering).
19 MR. WALSH: Keep that one.
20 MR. POULOS: You marked it as an exhibit.
21 MR. WALSH: It's not marked as an exhibit.
22 I just wanted to refresh his recollection.
23 It may be from yesterday.
24 MR. POULOS: I thought you said you were
25 marking it as Exhibit No. 1.

24

1 MR. WALSH: No.
2 Q. So, you don't recall any such conversation?
3 A. Not specifically, no.
4 Q. Did you and Joe Roggio have any discussion
5 about the ownership of the vessel relative to your
6 security?
7 A. Yeah. He's not -- we were surprised that the
8 Coast Guard would allow the transfer without making us
9 whole or at least notifying us.
10 Q. Well, did somebody talk to the Coast Guard?
11 A. No.
12 We were just surprised that this could even
13 happen without us being advised as lenders on this boat.
14 He owed money based on this asset.
15 I mean, you (sic) shouldn't be able to change
16 title without making us whole or being notified. We'd
17 have to sign off on that.
18 Q. Now, did you have a discussion with Mr. Roggio
19 before the vessel seizure?
20 A. I don't specifically remember.
21 Q. But you did have that conversation at some
22 point?
23 A. At some point, yes.
24 Q. Okay.
25 A. We were just kind of surprised that it was

25

1 allowed to happen.
2 Q. Now, you said you were concerned about
3 Mr. Cohen's financial position.
4 What was the basis of those concerns prior to
5 the time that you asked the vessel to be seized?
6 A. Well, my attorney in January, Richard Wagner,
7 advised -- well, we saw the transcripts of some
8 deposition where Barry admitted and said that if he
9 were to lose the Avila case legal reimbursement that he
10 was going to go bankrupt -- he was going to be forced
11 into bankruptcy.
12 Then his wife called the office. They were
13 going through a real nasty divorce. And she accused him
14 of beating her.
15 So, I went, "Uh-oh. This is getting ugly."
16 And that made me say, "We better secure the
17 asset."
18 And at that point, we advised their (sic)
19 attorney what our options were.
20 We never advised him what to do. We asked him
21 what to do.
22 Q. So, it was the call from your attorney and you
23 said you got a call from Chris Cohen.
24 A. The office did. I didn't personally receive
25 the call from Chris Cohen.

26

DEPOSITION OF JOSEPH FRANK CAPPUCCIO

<p>1 Q. Who received the call from Chris Cohen?</p> <p>2 A. I'm not exactly sure.</p> <p>3 Q. During the period of time that we're talking</p> <p>4 about, from 1999 to 2006, did you ever have any business</p> <p>5 dealings with Chris Cohen yourself?</p> <p>6 A. No, uh-uh.</p> <p>7 Q. So, it was the lawsuit having to do with legal</p> <p>8 fees; correct?</p> <p>9 A. It was Barry's admission that he might be</p> <p>10 forced to declare bankruptcy if the Court were not to</p> <p>11 reimburse his legal fees in the Avila case. It was his</p> <p>12 testimony that prompted me to believe that he might be</p> <p>13 going bankrupt. It was his words verbatim.</p> <p>14 Q. You believed that he was going to go bankrupt?</p> <p>15 A. He did, and it was in writing. And I read it.</p> <p>16 And it was under oath and perjury and whatever (sic).</p> <p>17 He said he was going to go broke if he was not</p> <p>18 reimbursed his legal bills. In January I came to that</p> <p>19 knowledge.</p> <p>20 Q. Mr. Cappuccio, as you sit here today, now that</p> <p>21 you know that the vessel, the asset you were concerned</p> <p>22 about, is in a separate corporation, that it is not</p> <p>23 personally owned by Barry, do you feel more secure or</p> <p>24 less secure?</p> <p>25 A. I would --</p>	<p>1 I'm not an attorney.</p> <p>2 Q. But you have owned some fishing vessels;</p> <p>3 right?</p> <p>4 A. But that doesn't make me an attorney.</p> <p>5 Q. No, I'm sure it doesn't.</p> <p>6 But you didn't get any information out of that</p> <p>7 ownership about --</p> <p>8 A. I -- I'm a fish salesman.</p> <p>9 I'm really not an attorney. And that's why</p> <p>10 when I have issues like this, I call my attorney. And</p> <p>11 that's what I always do when I get stuff like this. And</p> <p>12 I say, "What's this?" And he explains it to me. And I</p> <p>13 pay him. That's how it usually works.</p> <p>14 I'm not a play attorney. I'm not an amateur</p> <p>15 attorney.</p> <p>16 Q. But you --</p> <p>17 A. I'm a fish salesman.</p> <p>18 Q. In terms of security, you are telling me you</p> <p>19 don't understand the difference in your security</p> <p>20 situation when the vessel is owned by a separate</p> <p>21 corporation, and Barry, you said, stated on the record</p> <p>22 that he personally was going to go into bankruptcy --</p> <p>23 so, you don't understand the difference?</p> <p>24 A. I understand enough to call my attorney. And</p> <p>25 if he doesn't understand that, I call my accountant.</p>
<p>1 MR. POULOS: I would just say I'm going to</p> <p>2 interpose an objection that that mischaracterizes the</p> <p>3 evidence, since the testimony is that Mr. Cohen is the</p> <p>4 sole owner of the corporation that he transferred the</p> <p>5 title to. So, it still is the corporation and his</p> <p>6 asset.</p> <p>7 MR. WALSH: Q. You can answer the question.</p> <p>8 A. I'm not an attorney. I'm a fish salesman. I</p> <p>9 don't know.</p> <p>10 Q. I know you're a fish salesman.</p> <p>11 But you, Mr. Cappuccio, just talked about</p> <p>12 concern about security of the asset.</p> <p>13 A. That's why I asked my attorney.</p> <p>14 Q. But you said you had conversations with</p> <p>15 Mr. Roggio about the security of the asset and the</p> <p>16 ownership issue having to do with the corporate owner.</p> <p>17 Didn't you just say that?</p> <p>18 A. We were -- we were commenting how the Coast</p> <p>19 Guard -- why would the Coast Guard let that transfer</p> <p>20 without notifying us.</p> <p>21 On mortgages for property, which I knew</p> <p>22 something about, the lender would be advised of any</p> <p>23 transfer of property and be made whole on any note</p> <p>24 against such said (sic) property.</p> <p>25 Now, maybe ships are different. I don't know.</p>	<p>1 Joe Roggio is a CPA.</p> <p>2 He's an attorney (indicating Mr. Poulos).</p> <p>3 I'm a fish salesman.</p> <p>4 I appreciate the credit you're giving me, but</p> <p>5 I'm not that -- I'm not that gifted. This is very</p> <p>6 confusing, meticulous, very specific knowledge that I</p> <p>7 just don't possess.</p> <p>8 Q. Then you don't understand that with a</p> <p>9 preferred ship mortgage, your debt is prior to any debt</p> <p>10 that would be personal to Barry?</p> <p>11 A. I don't know that. I am not an attorney.</p> <p>12 Q. Did you find that out before you seized the</p> <p>13 vessel or had the government arrest the vessel?</p> <p>14 A. I asked my attorney to collect the money and</p> <p>15 secure -- make sure that money was secure. And he did</p> <p>16 what he is supposed to do.</p> <p>17 Q. So, did you yourself personally go over with</p> <p>18 Joe Roggio all the debts that Mr. Cohen might owe before</p> <p>19 the arrest?</p> <p>20 A. You know, I'm sure I did, but I really don't</p> <p>21 specifically remember.</p> <p>22 Q. Yesterday we had a document called an</p> <p>23 "Assignment of Joint Venture."</p> <p>24 Have you ever heard of such a thing?</p> <p>25 A. Yes.</p>

EXHIBIT 12

Deposition of CHRISTENE COHEN January 11, 2008

DEL MAR SEAFOODS v COHEN

Page 1 to Page 67

FOR:
GREGORY W. POULOS, ESQUIRE

CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

NICHOLS CERTIFIED COURT REPORTERS
2607 N. Hayden Road, Scottsdale, AZ 85257
110 West "C" Street, Suite 1300, San Diego, CA 92101

Phone: 1-800-227-0577
FAX: 1-480-990-7955

DISK
ENCLOSED

Deposition of CHRISTENE COHEN

BSA XMAX(12/12)

January 11, 2008

Page 45

1 A. No.

2 Q. This is a bad copy, but it was the one that was

3 attached to the Initial Disclosures. I'm showing you

4 Exhibit-4, and a document with Bates numbers Cohen00009.

5 Have you ever seen that document before?

6 A. No.

7 Q. Have you ever discussed with Barry a schedule of

8 payments that he was given by Joe Roggio?

9 A. No.

10 Q. How well do you know Joe Roggio? You worked --

11 A. Pretty well. I like him a lot.

12 Q. Do you think -- do you have any reason to believe

13 that Joe Roggio has any malice or ill-will towards you?

14 A. No.

15 Q. Do you have any reason to believe that he has any

16 malice or ill-will towards Barry?

17 A. I don't know.

18 Q. Do you think he -- from your knowledge and

19 experience working with him, do you think he's an honest

20 guy?

21 A. Pretty much.

22 Q. That's a little equivocal.

23 Do you have any reason to believe he would be

24 dishonest in any of his representations in this case?

25 A. I don't know.

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1 Q. Do you have any reason to believe that?

2 A. I don't know.

3 Q. As you sit here today, can you think of any

4 occasion where he's been dishonest with you?

5 A. No.

6 Q. Let me show you a better copy of that schedule of

7 payments. I found one. The one I'm going to show you was

8 marked as an exhibit to Barry's deposition in the Avila

9 Beach litigation.

10 (Exhibit-6 was marked.)

11 That's, I believe, just a better copy of that

12 schedule of payments.

13 Does that help you in terms of whether you've

14 ever seen that before?

15 A. No.

16 Q. You still have never seen it?

17 A. I have never seen it.

18 Q. In your employment with Old Port Fisheries/Del

19 Mar, you were not the person responsible for keeping track

20 of the debts of Michael or Leonard to that entity; were you?

21 A. No.

22 Q. Who was?

23 A. I don't know.

24 Q. Does the name -- I think it's Harriett Shields?

25 A. The bookkeeper was Harriett Shields and Dean

Page 47

1 Smith.

2 Q. Okay. Do you know if they were the people who

3 would track those?

4 A. Yes.

5 (Exhibit-7 was marked.)

6 Q. Have you ever seen Exhibit-7 before?

7 A. No.

8 Q. How well do you know Joe Cappuccio?

9 A. Pretty well.

10 Q. All right. Do you have any reason to believe

11 that Joe Cappuccio has any malice or ill-will toward you or

12 Barry?

13 A. Not towards me, but I'm sure with Barry.

14 Q. And why are you sure with Barry?

15 A. They're in a lawsuit.

16 Q. Okay. Other than the fact that they're in a

17 lawsuit. I mean, he never made any statements to you --

18 A. No.

19 Q. -- that he was angry at Barry or --

20 A. Never.

21 Q. Okay. And he had never done anything to you that

22 made you think that he was not -- that he had some personal

23 reason to try to cause any harm to you or Barry?

24 A. Not to me.

25 Q. Anything with respect to Barry other than this

Page 48

1 lawsuit?

2 A. Nothing comes to mind.

3 Q. Did you feel you were treated fairly as an

4 employee?

5 A. Yes.

6 Q. Are you aware of any claim being filed on your

7 behalf with the United States Marshal Service arising from

8 the loss of that fishing net?

9 A. No.

10 Q. How much was the net worth?

11 A. They're usually around \$30,000.00 a net.

12 Q. Do you know what size net this was?

13 A. No.

14 Q. Do you know when it had been purchased?

15 A. No.

16 Q. Looking at Exhibit-6 or 7, did Barry ever discuss

17 with you the addition of amounts beyond the \$215,000.00 to

18 the promissory note?

19 A. No.

20 Q. Where did you get the \$175,000.00 that was used

21 to make the payment on the note?

22 A. A second mortgage on our house.

23 Q. Was that mortgage taken out solely for that

24 purpose, or was it for some other purposes?

25 A. It was taken out for that purpose, and also -- I

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1 BY MR. POULOS:

2 Q. We were just starting to talk about that
3 conversation you had with Joe Roggio, and I had just a few
4 questions about that.

5 Is that the only conversation you had with anyone
6 from Del Mar about your divorce?

7 A. Yes.

8 Q. Okay. Did you tell Joe Roggio in that
9 conversation that Barry had beat you, or words to that
10 effect?

11 A. Yes.

12 Q. Do you recall anything else that you told him
13 about the underlying circumstances that were causing you to
14 get a divorce?

15 A. No.

16 Q. Did you tell him that you thought it would be a
17 difficult divorce, one that was going to be expensive and
18 messy, for lack of a better term?

19 A. I don't recall.

20 Q. You mentioned that you had been told that the
21 Point Loma Fishing Company and vessel operates at a loss;
22 yes?

23 A. Yes.

24 Q. Have you heard that also at other times from
25 Barry?

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1 A. Yes.

2 Q. It was your understanding that the vessel, even
3 when it's fishing, is not making a profit?

4 A. I don't know.

5 Q. But that's what Barry told you?

6 A. No. There were some months where the weather was
7 bad; the boat couldn't go out, so it wouldn't make as much
8 as other months.

9 Q. Right. But overall in the course of a year, it
10 operated at a loss?

11 A. What year are you talking about?

12 Q. Say 2005.

13 A. I don't know.

14 Q. 2006?

15 A. I don't know.

16 Q. 2007?

17 A. I don't know.

18 Q. All right. What did Barry tell you?

19 A. He doesn't tell me.

20 Q. But he has told you before that the vessel
21 operated at a loss?

22 A. If it was windy and the boat couldn't go out,
23 yes. He would -- yes. It was bad.

24 Q. In the divorce, you've been told the position is
25 that the vessel operates at a loss?

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1 A. Yes.

2 Q. And it's your understanding that that's on an
3 annual basis; isn't it?

4 A. I don't know.

5 Q. Have you ever seen the Requests for Production
6 that were served in this case?

7 A. Yes.

8 Q. And Request for Production No. 44 was "All
9 documents prepared in furtherance of your divorce
10 proceedings that evidence and/or relate to your assets and
11 liabilities."

12 Have you compiled those documents?

13 A. I don't have those documents.

14 Q. You don't have any of the documents in your
15 divorce proceedings?

16 A. No.

17 Q. Does your lawyer have those?

18 A. Some.

19 Q. Okay. And what documents does your lawyer have?

20 A. I do not know.

21 Q. Have you asked your lawyer to provide you with
22 those, so you can provide them in this case?

23 A. I know he would if -- if asked.

24 Q. If you asked him?

25 A. Yes.

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1 Q. And you haven't asked him?

2 A. No.

3 Q. Okay.

4 A. I don't know what to ask him for.

5 Q. Did you send him this Request for Production for
6 all documents prepared in furtherance of your divorce
7 proceedings?

8 A. No.

9 MR. POULOS: I'll have this marked as
10 Exhibit-8.

11 (Exhibit-8 was marked.)

12 BY MR. POULOS:

13 Q. Have you ever authorized Barry to act as your
14 agent --

15 A. No.

16 Q. -- In this case?

17 A. No.

18 Q. Have you ever authorized Barry to act on behalf
19 of the marital community in this case?

20 A. No.

21 Q. No?

22 A. No.

23 Q. When did you review the Request for Production of
24 Documents?

25 A. A few days ago.

DEPONENT'S CHANGES OR CORRECTIONS

NOTE: If you are adding to your testimony, print the exact words you want to add.
If you are deleting from your testimony, print the exact words you want to delete. Specify with "ADD" or "DELETE" then sign and date this form.

[illegible]

Signature: Christopher Cohen

Date: 2-25-03